



Appeal Decision

Site visit made on 30 May 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/G2245/W/22/3304067

Land east of 168 St Johns Hill, Sevenoaks TN13 3PF

- 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 G Algar (Kent House Partnership) against the decision of Sevenoaks District Council.
 - The application Ref 21/03402/FUL, dated 30 September 2021, was refused by notice dated 22 July 2022.
 - The development proposed is erection of part 3/part 4 storey building containing 8 flats as affordable housing (5 x 1-bedroom & 3 x 2-bedroom flats) with associated cycle/refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal the appellant submitted an executed planning obligation in the form of a section 106 legal agreement (the s106). It relates to the provision of affordable housing and to a financial contribution towards the Council's monitoring of air quality near the site.

Main Issue

3. The main issue in this appeal is:
 - whether the appeal site is a suitable location for the proposed development due to its effect, once built, on the internal or external living conditions of the existing or future occupants of houses opposite the site at Nos.10 to 22 Seal Road (the houses) and on the future occupants of the flats, having regard to air quality and emissions from passing vehicles generating nitrogen dioxide (NO₂) pollution.

Reasons

Local circumstances

4. The appeal site is an undeveloped parcel of land next to Seal Road. This part of the A25 is single carriageway on a hill with the houses in a row opposite the site, tight along the road edge with little set back. It is in the 'Bat and Ball' Air Quality Management Area (AQMA). National air quality objectives are not being met in this area and air quality is already known to be poor, including that air quality standards for NO₂ have been exceeded.

5. Residential development is particularly sensitive to poor air quality and NO₂ has the potential to cause harm to human health. The location of the houses and the flats mean the respective occupants are/would be vulnerable to the effects of NO₂ from passing vehicles. The development would be car free so not cause NO₂ by this means or adversely affect air quality in this respect.
6. Albeit a snapshot, I saw that the A25 is a busy main road with traffic passing close by the houses and the site. Vehicles were also intermittently stationary in this section of the road on the approach downhill towards a signal-controlled junction with the A225 with many engines idling. Vehicles leaving the junction were generally slower moving uphill past the houses and the site with engines under higher load, especially HGVs and buses. There were few electric vehicles.
7. The site is covered in vegetation and embanked so it angles upwards and away from the A25 to form an existing 'street canyon' with the houses. This has the effect of reducing dispersion of NO₂ trapped in this road corridor. The length and mainly four storey vertical height of the façade of the proposed block of flats, and its proximity to the A25 along one side, would form a narrower, more pronounced new street canyon. This would further suppress dispersion of NO₂.

Surveys

8. There is no NO₂ survey for the houses or the site. The nearest Council NO₂ monitoring diffusion tube, DT31, is in Seal Road slightly further up the hill so it is likely to reflect the local circumstances. Albeit by successively lower levels, between 2017 and 2019 the annual mean objective for NO₂ (40µg/m³ concentration) was exceeded at DT31. In 2020 and 2021 it dropped below 40µg/m³ reflecting lower traffic levels during the Covid-19 pandemic, but in 2021 increased above the 2020 level back towards 40µg/m³. The Council suggests it indicates an upward trend.
9. The appellant contends that more recent DT31 data indicates a level of 33.6µg/m³ for 2022, so lower than in any of the previous five years and overall, a downward trend. However, though covering 10 months of this year it is partial data for January to October. This has been annualised and adjusted by an unspecified bias factor, itself an average of unspecified 2017 to 2021 national bias adjustment factors, whereas the Council has sometimes used a local bias factor in this AQMA.
10. There is no agreed bias factor and the basis of the appellant's 2022 NO₂ figure is not fully transparent. Moreover, in 2021 only three months at DT31 were below 40µg/m³, and two of these only marginally so. November and December 2021, which is less likely by then to have been so influenced by Covid-19, were significantly above 40µg/m³. If this pattern was repeated in November and December 2022 this could have a significant (upward) influence on the appellant's 2022 proxy NO₂ figure.

Modelling

11. The appellant's air quality report¹ (the AQR) has modelled likely levels of NO₂ for suitable receptors at the houses and the flats in 2024 (not 2027, as the AQR also refers to). It includes a 2019 baseline to counteract the skewing effect of Covid-19, has used national forecasts, such as for traffic and vehicle

¹ Air Quality Assessment, February 2022 (Gem Air Quality Ltd)

emission levels, and reflects some 'worst case' outcomes. The model has also been adjusted including to reflect monitored versus modelled NO₂ at DT31.

12. The (2019 based) modelled 2024 effect of the new street canyon is that NO₂ would significantly exceed 40µg/m³ at ground floor (GF) and first floor (FF) levels at the front of the houses, which include small front gardens. It also shows that NO₂ levels at the houses are anyway modelled to increase by 2024 with the existing street canyon and mostly exceed 40µg/m³. Nevertheless, the levels are significantly higher for the new street canyon and while some percentage change between the effects of the two street canyons is 'negligible', some is 'moderate' or 'substantial'.
13. This modelling also shows NO₂ in the new street canyon to significantly exceed 40µg/m³ at GF and FF levels² at the front and sides of the flats, though potentially also at lower ground floor (LGF) level³ but not at the other flats. This level of NO₂ would affect at least four of the eight flats and possibly more than half.
14. The AQR has also assumed that traffic and vehicle emission levels locally would continue to fall and improve respectively to 2024, in line with national forecasts. On this basis, the equivalent (2024 based) modelled 2024 effects are that 40µg/m³ NO₂ levels would not be exceeded at the houses or the flats whether one considers the existing or new street canyon.

Mitigation

15. The AQR states that '*Based on the outcome of this assessment mitigation measures would be required to mitigate the impact of poor air quality (NO₂) at all the proposed residential units*'. Even taking just the GF and FF flats, occupants would have to rely on adequate ventilation from a mechanical system drawing in clean(er) air in from outside at roof level to avoid adverse impact on health. If the air was also filtered to scrub out NO₂ inlet vents could be placed anywhere externally on the building.
16. However, according to the AQR windows would need to be 'sealed' to avoid compromising the effectiveness of the system or the quality of the clean(er) air delivered internally for breathing (it does not refer to trickle ventilation). This would not allow, for example, a natural breeze to be experienced or help control room temperature and expel excess humidity, stale air or other odours such as from cooking (including smoke) or painting and decorating. Whereas the appellant's noise report⁴ states that '*most residents value the ability to open windows at will, for a variety of reasons*'. It also sets out that despite a ventilation system, windows would need to be opened for purge ventilation such as in the circumstances outlined above. This would allow NO₂ in.
17. The GF and FF flats include side facing (to the A25) Juliette balconies and would provide a main outlook for occupants. Ordinarily, and in this case, a more open aspect from main living areas of flats to the outside by this means helps to off-set a lack of private external amenity space or limited or less convenient external communal amenity space. If these balcony sliding glazed 'doors' were opened this would allow NO₂ in, or if these 'windows' were sealed

² According to Table 17 of the report

³ According to Section 6.2 of the report

⁴ Noise Impact Assessment, July 2021 (Acoustics Plus Noise & Vibration Consultants)

these benefits would not be achieved. These considerations would also apply to the occupants of all the higher-level flats if these are affected flats.

18. The LGF flat (if it is affected) would have a front entrance door facing the A25, likely to be opened and closed briefly into a hallway. However, a door from the open plan living, kitchen and dining area to grassed area next to this flat could be left open and allow NO₂ in. No mitigation has been proposed for this private external amenity space which would face the A25 at about the same level.

Air quality conclusions

19. There is no survey that shows annual mean NO₂ concentrations at DT31 have been sustained below 40µg/m³ in the existing street canyon post Covid-19. Nor a downward trend in this regard in 2022 or beyond.
20. Even if the (2024 based) modelled 2024 effect of the new street canyon means no NO₂ mitigation is required for the houses or the flats, some of these levels would still be close to 40µg/m³ in 2024. If planning permission was granted in this appeal, the flats might be built and first occupied in 2024 or soon after. If so, occupants would, in my view, already be at unacceptable risk of being adversely affected by this modelled NO₂, including potentially as is borne out by the (2019 based) 2024 modelling.
21. National traffic forecasts applied locally indicate that traffic levels along the A25 in 2022 would have by then already returned to approximately pre Covid-19 levels, following an evident slight upward trajectory in traffic levels between 2018 and 2019. Even if vehicle emissions continued to improve locally, including a greater take up of electric vehicles, there is no evidence before me of the significance or extent of any increased or sustained local working from home (carry over from Covid-19 working patterns). Nor about local traffic levels on the A25 beyond 2022 or any local NO₂ modelling beyond 2024, including that any increase in traffic levels would be offset by lower vehicle emissions.
22. Any figure above 40µg/m³, even if by a 'minimal' amount, would not improve local conditions or achieve compliance with this local limit. It would instead make an acknowledged poor air quality environment, already intrinsically subject to significant adverse impacts on human health, cumulatively worse. Moreover, there is no clear indication of any actual or modelled significant or sustained improvement in local NO₂ air quality by any particular amount within any particular timeframe.
23. Accordingly, I consider that there is insufficient longevity and robustness to the surveys and modelling to suggest with sufficient confidence that 40µg/m³ would not be breached by, or shortly after, first occupation of the flats. Nor for any significant period thereafter for this otherwise permanent development.
24. A ventilation system is technically feasible and may be in use elsewhere but there is no evidence that those developments or installations are directly comparable to the circumstances in this appeal. There are no details of such a system before me, including whether it would regulate any of the practical domestic situations outlined earlier above. The Council has suggested a condition in this regard and the appellant does not object to it. Nonetheless, given the concerns outlined above, reliance on a system and that the matter in hand relates to direct or indirect impacts on people, I consider these details

would be fundamental to an in-principle decision to grant planning permission in this case. This would also provide certainty about future maintenance and cleaning of a system, including if the owner of any flat was to change, as well as the implications of breakdowns or power cuts to ensure satisfactory future performance and integrity of a system.

25. However, even if the appellant intends a system would mitigate NO₂ beyond 2024 I cannot, therefore, be certain that it would not be unduly oppressive and conducive to satisfactory internal living conditions. This would apply to at least the GF and FF occupants of the flats, or as well the LGF flat including potentially unsatisfactory external living conditions. The 2-bedroom flats would also otherwise be suitable in size for a small family with a young child(ren).
26. Furthermore, if such mitigation is necessary for at least some occupants of the flats to counter the new street canyon effect due to the development, there is no apparent reason why this should also not apply to the occupants of the houses, given the proximity of the houses to the site and that they would form one side of the new street canyon. No mitigation is proposed for the occupants of the houses, including in front gardens. Despite whether any mitigation in this regard is feasible and/or within the control of the appellant or the Council, the appellant has not said mitigation is not required for the occupants of the houses if NO₂ concentration exceeded 40µg/m³ because of the development whether sooner or later.
27. Taking all the above into account, I am therefore not satisfied the appellant has demonstrated that the site is a suitable location for the proposed development due to its adverse effect, once built, on the internal and external living conditions of the existing and future occupants of houses opposite the site at Nos.10 to 22 Seal Road and on some or all the future occupants of the flats, having regard to air quality and emissions from passing vehicles generating nitrogen dioxide (NO₂) pollution. In these circumstances it is contrary to Policies EN1 and EN2 of the Council's Allocations and Development Management Plan, February 2015. Amongst other things, and in the context of its design, scale, height and layout, these policies require adequate residential amenities for future occupiers of the development and safeguarding of the amenities of existing and future occupiers of nearby properties having regard to location and exposure to excessive air pollution.

Other Matters

Planning obligation

28. The main parties agree that the s106 would deliver all 8 flats as affordable housing (AH). This would be at odds with Policy SP3 of the Council's Core Strategy, February 2011 which in this case requires 20% of the flats to be AH. Moreover, the Framework sets out that AH should not be provided in minor residential development, as is also reflected in relevant Planning Practice Guidance. However, housing development on small sites is significant in the Council's District. It has not delivered AH despite a high level of need across the relevant housing market area and a shortfall in comparison with existing provision. Accordingly, Council officers have worked in collaboration with the appellant and West Kent Housing Association to deliver a 100% AH scheme. The size and tenure of the flats would meet an acknowledged priority AH need from the Council's Housing Register.

29. A financial contribution towards the Council's air quality monitoring initiative near the site would be aligned with the Council's aims for the AQMA, albeit that this would not overcome the air quality impacts of the development referred to earlier above.

Locally listed building

30. Next to the site on one side, No.168 St Johns Hill is a locally listed building (the LLB). Its significance includes a detached siting on a prominent corner at the bottom of Seal Road turning into St Johns Hill. It therefore makes a positive contribution to the townscape and appearance of the area. The development would be imposing in scale and massing relative to the LLB and erode a large part of its currently undeveloped setting on one side. However, variety in external elevation materials and a step down in height would moderate its visual and physical presence so not unduly interfere with the way in which the LLB is experienced in the streetscene. The limited harm to this non-designated heritage asset would be outweighed by the notable public benefits of the development.

Council's decision

31. The appellant engaged with Council officers pre-application. The Environmental Health Officer did not object to the application. The members of the Council's planning committee resolved to refuse planning permission for the reasons cited in the Council's decision notice, against the Planning Officer recommendation to grant planning permission. They are entitled to do so. The appellant considers that Members were nonetheless unreasonable but this is not a matter before me in this appeal. I have considered the development and determined this appeal on the evidence before me and its individual planning merits.

Planning Balance

32. The main parties agree that the Council cannot currently demonstrate a 5-year supply of deliverable housing sites and that it was a 2.6-year supply. Also, that the delivery of housing has been substantially below (less than 75%) that required by the Housing Delivery Test. I have no reason to find otherwise. Either way Framework paragraph 11(d) is therefore engaged. Nor do I disagree with a general commentary on such matters by another Inspector in an appeal decision that I have been referred to⁵. There are no reasons why the provisions of paragraph 11(d)(i) apply, so the 'tilted balance' in paragraph 11(d)(ii) must be considered. The starting point is that planning permission should be granted.
33. Through the Framework the Government seeks to significantly boost the supply of housing and meet people's needs for AH. The development would make efficient and effective use of a small, under-used windfall site in an existing settlement in circumstances where much of the Council's District is constrained by the Green Belt. Eight new homes would make a meaningful contribution to housing supply and delivery and a marked contribution to the provision of AH. These important social and economic benefits, arising from the construction and occupation of the development, have considerable weight in favour of the development.

⁵ APP/G2245/W/21/3273188

34. Nonetheless, the development has significant potential to cause or result in serious, unacceptable harm to the living conditions of those who would live in it or live nearby by virtue of its location in a poor air quality area and effect on local NO₂ pollution. These outcomes would fundamentally be at odds with objectives of the Framework to ensure appropriate and suitable land, including its location, is developed for new homes that will promote health and well-being and function well not just for the short term but over the lifetime of the development with a high standard of amenity for existing and future users. These important social and environmental considerations have substantial weight against the development.
35. The adverse impacts of granting planning permission would, therefore, significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. Accordingly, the presumption in favour of sustainable development does not apply in this case.

Conclusion

36. The proposal does not accord with the development plan taken as whole. There are no material considerations, including the provisions of the Framework, to indicate that the decision should not be made otherwise than in accordance with the development plan.
37. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR