
Appeal Decision

Site visit made on 2 August 2023

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 11th August 2023

Appeal Ref: APP/J2210/W/22/3306671

**Land between Allora and Mill Tor, Marlborough Road, Whitstable, Kent
CT5 3DH**

- 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 David Watts against the decision of Canterbury City Council.
 - The application Ref CA/22/00974, dated 3 May 2022, was refused by notice dated 29 June 2022.
 - The development proposed is a two-storey residential dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the development of a two-storey residential dwelling, on land between Allora and Mill Tor, Marlborough Road, Whitstable, Kent CT5 3DH, in accordance with the application, Ref CA/22/00974, dated 3 May 2022, subject to the following conditions:
 - 1) The development shall be commenced not later than 3 years from the date of this decision.
 - 2) The development shall be carried out in accordance with the approved plan, Drawing No. P01.
 - 3) The proposed new dwelling shall not be occupied until the vehicular accesses, parking spaces and driveway shown on Drawing No. P01 have been laid out in accordance with these approved details. Thereafter, these facilities shall be retained and kept available for the parking and manoeuvring of vehicles in connection with the dwelling.
 - 4) The dwelling shall not be occupied until provision has been made within the site for the secure storage of bicycles. Thereafter, provision for the storage of bicycles on the site shall continue to be made available at all times.
 - 5) In the case of the windows to be installed in the south-eastern and north-western side elevations of the first floor bedrooms, any part of those windows which is less than 1.7m above floor level shall be fitted only with obscured glazing, of Pilkington Level 3 or equivalent, and shall be designed to be non-opening. Once installed, these windows shall thereafter be permanently retained in this form.

Clarification

2. On the application form, the address of the site is stated to be in Marlborough Road. On the local road signs, and some maps, the name appears instead as Marlborough Street, but I note that this is disputed by some local residents. For the sake of consistency, I have adopted the address stated in the application form. Whilst I accept that any discrepancy of this nature may have the potential to cause confusion, in the present case I am satisfied that no-one is likely to have been prejudiced.

Planning context and agreed matters

3. In the Canterbury District Local Plan (the CDLP), adopted July 2017, Policy SP4 sets out the strategy for housing and other development in the District. The principal focus is to be in the urban areas, together with more limited development in villages and certain smaller settlements identified as hamlets; in the countryside outside these, development may be permitted for agriculture and forestry. This is amplified by Policy HD4, which sets out a limited range of other circumstances in which new dwellings may be admitted in the countryside, including the re-use of existing buildings.
4. In the present appeal, it is agreed by both the Council and the appellant that the appeal site lies outside the built confines of any settlement, and is therefore in the countryside. It is also not disputed by the appellant that the proposed development does not fall into any of the categories permitted in that area under policies SP4 or HD4. It follows that the appeal proposal conflicts with these policies.
5. However it is common ground between the parties that the Council has “failed” the Housing Delivery Test¹; and also that this means that relevant CDLP policies are out of date, and therefore the presumption in favour of sustainable development is engaged, in accordance with paragraph 11d of the National Planning Policy Framework (the NPPF)².
6. In these circumstances, national policy requires that permission should be granted, unless the benefits of the development are outweighed by the adverse consequences, significantly and demonstrably. I have dealt with the appeal on this basis.

Main issue

7. From the submissions before me, I consider that the main issue in the appeal is whether the appeal site is a suitable one for the proposed development, having regard to its accessibility to local services and facilities.

Reasons for decision

8. I saw on my visit that the appeal site lies within a small cluster of houses grouped around the junction of Marlborough Road with Clapham Hill (the A290), just to the south of the town of Whitstable. Within this group, the properties are a mixture of medium-sized, detached and semi-detached houses and bungalows, arranged in linear fashion, on evenly-spaced and regularly-shaped plots, forming a distinct and fairly consolidated grouping. To the east,

¹ The Council's officer report, paragraph 3

² As above

west and south is a larger area of residential development, of a more intermittent and sporadic nature, with mostly larger properties set within extensive grounds. To the north is the A299 Whitstable Bypass. The site itself comprises a rectangular plot of mown grassland, fronting Marlborough Road, in between the existing dwellings 'Allora' and 'Mill Tor'. In terms of its size, shape and character, the appeal site is not dissimilar from these neighbouring plots.

9. Although the appeal site is separated from the built-up area of Whitstable by the A299, the distance involved is fairly short. On the other side of the bypass, within another few hundred metres, there is the Estuary View business park, which includes a choice of two supermarkets, various other retail stores, and a medical centre with pharmacy. The route, via Clapham Hill and Thanet Way, also passes various other businesses and employment sites. For most people, the overall walking time to these facilities is likely to be around 10-12 minutes.
10. For those on foot, the journey could be made entirely on paved footways of a reasonable standard, which are level, lit and of adequate width throughout. The walk would not be an especially inviting one, alongside main roads, with speeds of up to 40 mph, little of visual interest, and nothing by way of shelter. But it would be unrealistic to expect a mainly urban route to avoid any such drawbacks altogether. Two road crossings would be involved, including one at the slip road where traffic comes off the bypass. But in both cases, the crossing points are close to roundabouts, where speeds are likely to be relatively low, and where visibility is good; both of these have dropped kerbs to facilitate crossing movements, and one also has a central reservation. There is no suggestion that either crossing has any record of accidents. Children would need to be accompanied, but that would not be unusual even in a more urban location. Cyclists using the route would have to negotiate the two roundabouts, but would also have the option of dismounting at the busier points, and using the pedestrian facilities. The elderly or less mobile would be less likely to use the route, but not every development can be sited to suit all such categories of user.
11. Travel to schools, colleges and leisure facilities would require slightly longer journeys, further into Whitstable itself. However, the town is not particularly large, and thus most such journeys would be relatively short. Bus services into the town are available from Clapham Hill, at reasonably frequent intervals, with the nearest stop being within two minutes' walk from the appeal site. At least one other practical alternative to the car is therefore available.
12. I appreciate that, visually, the A299 creates a sense of separation between the appeal site and the town. But in practical terms, for the reasons already explained, the road does not seem to me to be a significant barrier to travel between the appeal site and facilities within the town.
13. In summary, although the route that would need to be used for walking or cycling is not perfect, it would still offer a reasonably easy and convenient option for those wanting to use these modes of travel. Consequently, despite some shortcomings in this respect, the proposed development would be accessible to local facilities by a choice of non-motorised modes, and by public transport, as well as by relatively short car journeys. Having regard for the acknowledged need to increase housing delivery in the District, I find no justifiable basis for a refusal of permission based purely on these grounds relating to accessibility.

14. I conclude that, in these circumstances, the appeal site offers a suitable and reasonably sustainable location for the development now proposed.

Other matters

15. The appeal site is close to two internationally designated Special Areas of Protection (SPAs), so designated for their rare habitats and birdlife. It is accepted by the appellant that the proposed development would have the potential to add, albeit marginally, to the pressures being experienced by these areas due to recreational disturbance, and I have no reason to disagree. The appellant has entered into a legal undertaking to contribute to the Council's Strategic Access Management and Monitoring scheme, which has evidently been agreed with Natural England, and on this basis the Council has withdrawn its objection based on the impact on the SPAs. Having considered the evidence before me, I am satisfied that the development would have no significant effect on the protected areas or their conservation objectives.
16. I am aware of the appeal decision relating to a site at Royal Avenue, quite close to the present appeal site, in which a proposal for a dwelling was dismissed, on grounds of its countryside location and consequent conflict with CDLP Policies SP4 and HD4. However, in that appeal the inspector found an adverse impact on the area's rural character and appearance. And in any event, the appeal was determined at a time when the Council was able to demonstrate a favourable supply of housing land.
17. I note the Council's reference to Policies S1 and DBE3. However, S1 merely reinforces NPPF paragraph 11d, and DBE3 relates only to design. Neither therefore has any bearing on the present appeal.
18. From the submissions of a neighbouring occupier, I note that planning permission has previously been refused on the appeal site, and on a number of other parcels of land nearby. However, I must base my decision on the planning circumstances that apply now. The applications that are referred to all go back over 20 years, and some much more. Since then policies have changed, with the first publication of the NPPF in 2012, and the adoption of the CDLP in 2017. The evidence before me regarding the local housing situation is based on the most recently published government figures. These considerations all point towards a different conclusion from that arrived at previously. My decision on the present appeal does not necessarily mean that any future applications on other nearby sites would have to be approved; every application must be determined on its merits, and such decisions would be matters for the Council in the first instance.
19. The new dwelling now proposed would be somewhat larger, and more modern in its styling, than either of its immediate neighbours. However, given the sizes and general character of the other properties in the area generally, I do not consider that the design would be out of place. The new building would be sited slightly further back than either Mill Tor or Allora, and would thus have the potential for some impact on those properties in terms of outlook and light. But it would also be spaced well away from either of the side boundaries, and therefore any such effects would be relatively minor. Overlooking from the new dwelling's side bedroom windows can be eliminated by means of the condition that I intend to impose, requiring the use of obscure glazing. The side rooflights would be too high to give rise to any loss of privacy. Any

overlooking at ground floor level can be overcome by means of screening, and in this respect it seems to me that the existing boundary vegetation performs this function sufficiently well without a need for any further requirement.

20. I note the concerns expressed with regard to traffic. But Marlborough Road, and the neighbouring roads Sunnyside and Wellington Street, serve only a handful of properties and businesses, before leading to dead-ends. The volume of traffic on these roads is clearly likely to be low. The additional vehicle movements generated by the development now proposed would therefore not be likely to materially affect traffic conditions or safety.
21. With regard to wildlife, I have no reason to doubt the list of flora and fauna observed in the area. But there is no evidence that the development would directly affect any of these, or that any protected species would be affected in any way.
22. Any issues relating to the availability of water or utility services would be matters to be resolved between the developer and the relevant service providers. The grant of planning permission does not circumvent the need for the arrangements for connections to those services to be agreed with the providers, in the usual way, nor does it override the rights of any other landowners with regard to any necessary wayleaves or easements.

Reasons for conditions

23. In allowing the appeal I have had regard to the list of draft conditions suggested by the Council. Those that I intend to impose are set out at paragraph 1 of this decision. In some cases I have edited these for conciseness and clarity.
24. A condition securing the provision of the proposed access, parking and manoeuvring areas is necessary for reasons of highway safety and to ensure a high standard of development. A requirement for cycle storage is needed to ensure a choice of transport modes. Obscure glazing to the bedroom windows is necessary to protect the privacy of neighbouring occupiers. A similar requirement relating to the bathroom rooflights is unnecessary as these are clearly above eye level. A condition specifying the approved plans is needed to ensure that any minor changes can be dealt with expeditiously.

Conclusion

25. The proposed development would conflict with Policies SP4 and HD4 of the CDLP, due to its location in the countryside. In the absence of any other policies which give support to the development, the scheme is contrary to the development plan as a whole.
26. However, in view of the shortfall in housing delivery, the 'tilted balance' in NPPF paragraph 11d is engaged. The development would bring social and economic benefits, in the form of an increase in the housing stock, construction jobs, increased local spending, and a consequent boost to the local economy, as well as supporting the vitality of the local rural community. Despite the small size of the development, these benefits would be tangible. Whereas, no specific harm of any kind has been substantiated.
27. The benefits of the development are therefore not outweighed, either significantly or demonstrably, as required by paragraph 11d; indeed in the

absence of any clear harm, they are not outweighed at all. These considerations clearly outweigh the conflict with the development plan.

28. I have considered fully all the other matters raised in the representations before me, but none alters or outweighs the above conclusion.

29. The appeal is therefore allowed.

J Felgate

INSPECTOR