



Appeal Decision

Site visit made on 21 August 2023

by J E Jolly BA (Hons) MA MSc MCIH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th August 2023

Appeal Ref: APP/J2210/W/22/3312515

25 Nunnery Fields, Canterbury, Kent CT1 3JN

- 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 LJW Developments Ltd against the decision of Canterbury City Council.
 - The application Ref CA/22/00416, dated 22 February 2022, was refused by notice dated 17 June 2022.
 - The development proposed is for a change of use from a public house to 2 No dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An addendum to the appellant's Marking Viability Report (MVR) (2021) was submitted in July 2023. As such, the Council no longer wishes to contest its first reason for refusal given on its decision notice related to the loss of a local community facility. I have proceeded accordingly.
3. Annexe M of the Procedural Guide, Planning Appeals, England (2019) and the national Planning Practice Guidance (PPG) advise that the appeal process should not be used to evolve a scheme to overcome the Council's reasons for refusal, rather a fresh planning application should usually be made. Moreover, it is important that the evidence which is considered by the Inspector is essentially the same as that which has been considered by the Council, and on which any interested parties views were sought. However, subsequent to the verification of the appeal before me, the appellant requested consideration of a revised drawing for the 'shop-front' elevations of the appeal building. Notwithstanding the Wheatcroft principles¹, in certain circumstances a proposal can be amended through revised plans during an appeal. I have considered the proposed revision and found that drawing (05) would more closely reflect the original elevation of the appeal building than the initial drawing submitted by the appellant. For that reason, as I do not consider that my acceptance of the drawing would prejudice interested third parties and consultees, I accept the drawing into evidence. Consequently, the Council has confirmed that its second reason for refusal related to the character and appearance of the CA would fall away. I see no reason to disagree.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment (JPL, 1982, P37)

4. This appeal was originally scheduled to be determined at a public Hearing. However, given the relative brevity of the Council's remaining objection related to the effect of the proposal on the integrity of the Stodmarsh Special Area of Conservation, and the extended opportunity for interested parties to make final representations on all matters, the appeal has been determined by means of the written representations process.

Main Issue

5. Therefore, the remaining main issue in this appeal is the effect of the proposal on the integrity of the Stodmarsh Special Area of Conservation (SAC).

Reasons

6. The 'Two Doves' is a vacant public house that is located close to Canterbury city centre where a range of shops and services can be found. The appeal building is located at the end of a row of older-type residential dwellings that face directly onto the main highway.
7. The need to protect and safeguard the SAC means development proposals are considered in the light of the Conservation of Habitats and Species Regulations 2017 (the Regulations), with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species. The Regulations require the decision-maker, before granting consent for a plan or project, to carry out an Appropriate Assessment in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. If the Appropriate Assessment shows that the integrity of a European site would be affected then consent for the plan or project can only be granted if there are no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest and compensatory measures will be provided.
8. The appellant submitted a Nutrient Neutrality Report (NNR) in November 2022 in support of the case. My attention is drawn to the comparative average water usage between public houses and residential dwellings. Nonetheless, the Council contends that the NNR does not satisfactorily address the matter of water nutrient neutrality as it does not accord with Natural England advice related to usage calculations for public house employees or patrons living in the relevant catchment area of the 'Two Doves'. Indeed, I concur with the Council that the NNR is less than ideal in this respect and therefore I cannot be certain if the figures provided are reliable.
9. Furthermore, although I recognise that the likely nitrogen generation from the two dwellings proposed would not be substantial, in adopting a precautionary approach and, particularly given the lack of appropriate mitigation or the opportunity to apply alternative solutions and there being no imperative reasons as to why development should be carried out, I cannot be confident that no significant adverse effects on the integrity of the SAC would arise either in isolation or in combination with other plans or projects. Even if I was to find that the impact of this proposal would be *de minimis*, for the purposes of the Regulations I am also bound to consider the prospect of other schemes coming forward which might give rise to cumulative harm.

10. Nevertheless, the appellant suggests that a mitigation option would be to wait for a strategic solution to the effect of the proposal on the SAC. However, even if a strategic solution were to exist, in this specific case, although the appellant was aware of the need, and willing to make the necessary contribution, there has been no planning obligation or other mechanism submitted to secure that contribution. As such, I cannot be certain that the mitigation measures, including any nutrient credits, would be forthcoming or implemented in an effective and timely manner.
11. Until strategic solutions are developed in consultation with Natural England, to which individual proposals can contribute, such as nutrient credits, it will remain difficult for smaller developments such as the appeal scheme to demonstrate nutrient neutrality. However, that does not negate my duty, as a competent authority under the Regulations, to find that there would be no adverse effect on the integrity of the SAC before agreeing to the proposal.
12. Without the necessary evidence and mitigation at the decision stage, I am unable to undertake an Appropriate Assessment. However, given my duties under the Habitats Regulations, my findings in respect of European Sites are determinative and in accordance with Paragraph 180 of the National Planning Policy Framework and Policy LB5 of the Canterbury District Local Plan 2017, which says, amongst other things, that sites of international nature conservation importance must receive the highest levels of protection, I must conclude that the appeal should fail.

Other Matters

13. I acknowledge comments submitted by interested parties, including responses to the updated MVR. However, as I have found against the appellant on the main issue, and therefore planning permission is to be refused, these matters need not be considered any further in this case.
14. I note that the proposal would result in one new dwelling against the Council's housing supply, but this does not outweigh the harm to the SAC I have found above.

Conclusions

15. For the reasons given above I conclude that the appeal should be dismissed.

J E JOLLY

INSPECTOR