



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: 31 August 2023

Appeal Ref: APP/Z2260/W/22/3308543

Land to the rear of 61 Ellington Road, Ramsgate, Kent CT11 9SX

- 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 Marc Turnier against the decision of Thanet District Council.
 - The application Ref F/TH/21/1780, dated 14 November 2021, was refused by notice dated 18 May 2022.
 - The development proposed is a new-build one bedroom dwelling.
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Decision

1. The appeal is dismissed.

Main issues

2. The main issues in the appeal are:
 - the effects of the proposed development on the character and appearance of the area;
 - the development's effects on the living conditions of neighbouring occupiers;
 - and whether the potential effects on the Thanet Coast and Pegwell Bay Special Protection Area would be satisfactorily mitigated by the submitted legal undertaking.

Reasons for decision

Effects on the area's character and appearance

3. Ellington Road forms part of an established residential area, laid out in the late 19th and early 20th centuries. The area has an eclectic mix of detached, semi-detached and terraced housing. Although the area has a wide variety of different architectural designs and styles, there is also a high degree of consistency in the generous proportions and rich detailing of the original properties, giving the area an attractive, mature character.
4. No 61 Ellington Road occupies a prominent position, at the corner with Picton Road. The property is a large detached house, with accommodation on three floors, now divided into flats. At the back of the property is a 2-storey rear wing, with a projecting stairway and balcony access. To the rear is the garden, which is partly screened by a brick boundary wall. Beyond this is a 2-storey block of flats known as Parkside Court, which faces onto Picton Road. In its present form therefore, the rear garden of the appeal site provides a visual break between the buildings in Ellington Road and those of Picton Road, separating the two road frontages, and punctuating the street scene. As such,

it seems to me that the site performs a valuable function in reinforcing the area's late Victorian and Edwardian characteristics, and enhancing its local distinctiveness.

5. The new 2-storey dwelling now proposed would be sited on that part of the appeal site which is adjacent to Parkside Court, and thus would be read as an extension of the built frontage of Picton Road. However, the effect of this would be to reduce the existing open garden area by about 40 per cent, leaving a gap of no more than 7.6m between the two built frontages. In the context of the scale of the surrounding buildings, a gap of this reduced size would to my mind become far less visually significant, and its value to the street scene would thus be largely lost. Also, due to the reduction in the separation between the respective frontages, the proposed new dwelling would appear excessively cramped. As a result, the area's existing attractive character and distinctiveness would be diminished.
6. In addition, I note that planning permission exists for a rear extension to the existing appeal property. If that extension were built, the space within the site would be further reduced, and in that event, the harmful effects of the present appeal proposal would be further exacerbated. Although it is stated that the appellant no longer intends to implement the permission, there is no apparent reason why this intention could not change. This is not a matter that could be resolved by condition. The possibility of the present proposal being implemented together with the already permitted rear extension, reinforces my view that the appeal scheme would cause harm
7. I accept that open gaps are not necessarily found on all the other corner plots in Ellington Road or other nearby streets, partly because in some cases similar sites have been lost due to infilling. But by and large, it seems to me that some kind of visual break is a common feature of many such plots in the area, and where they survive, these contribute positively to the area's visual quality. In any event, these considerations do not change my view of the particular contribution made by the appeal site, and the cramped nature of the development now proposed, for the reasons already stated.
8. I appreciate that the appellant has sought, as far as possible, to overcome the reasons on which a previous application at the site was refused. Clearly, a good deal of care and imagination has gone into the present design, and in general terms I agree that the scheme now proposed is not objectionable in terms of its size, height, materials or detailing. But these matters do not outweigh the harmful impacts that I have identified.
9. Consequently, for the reasons already explained, I find that the proposed development would cause significant harm to the area's character and appearance. As such, it would fail to respect its surrounding context in terms of its form and layout, nor would it promote or reinforce the area's local character. In all these respects, the scheme would conflict with the aims of Policy QD02 of the Thanet Local Plan (the TLP), adopted in July 2020.

Effects on neighbouring occupiers

10. With regard to impacts on neighbouring properties, the Council's concerns relate mainly to the effects on Nos 1 and 2 Parkside Court, in terms of outlook and visual impact. However, I saw on my visit that the windows in these two flats that face towards the appeal site appear to be obscurely glazed, and

therefore are likely to serve bathrooms. Furthermore, the distance between the two buildings at this point would be about 2.5m. As such, the development would not, in my view, have any unacceptable effects on living conditions at Nos 1 and 2 Parkside Court, either due to loss of outlook, sense of enclosure, or any other reason. The Council's objection on this ground therefore does not justify refusal.

11. But nevertheless, impacts on living conditions are also raised in the representations from a number of other objectors. Having considered these, it is evident from the submitted plans that the proposed dwelling would have two large windows in its rear elevation, at first floor level, which would face the rear garden of No 59 Ellington Road at a distance of less than 2.6m. One of these windows would serve a proposed home office or study area which, if used for that purpose, would have the potential to be heavily used throughout the day. No 59's garden is not particularly large, and therefore, as far as I can tell, the great majority of it would be exposed to direct overlooking from this window, at very close range. In these circumstances, the loss of privacy to the occupiers of No 59 would represent an unacceptably adverse impact on their living conditions.
12. In addition, the development would be sited directly behind the rear ground floor windows of the existing property at No 61 Ellington Road, at a distance of less than 8m, as already stated. One of the rooms affected is shown as a kitchen. In this context, I also note that the outlook from all of these rear ground floor windows is already restricted to some degree by the existing balcony which overhangs at first floor level. In these circumstances, a building of the size now proposed, at such a relatively close distance, would to my mind have a substantial adverse visual impact on the outlook from No 61's ground floor kitchen. I appreciate that other rooms within the building will have an outlook in other directions, which would be unaffected, but there is no evidence that this would compensate for the impact on the view from the kitchen. I have also had regard for the submitted Sunlight and Daylight Assessment, but this does not change my view as to the impact in terms of outlook, as set out above.
13. I therefore conclude that the development would cause unacceptable harm to the living conditions of neighbouring occupiers at Nos 59 and 61 Ellington Road, due to the impacts on privacy and outlook respectively. In this respect the scheme would conflict with TLP Policy QD03, which seeks to ensure that all developments are compatible with neighbouring buildings and spaces.

The undertaking

14. The appeal site falls within the defined zone of influence of the Thanet Coast and Pegwell Bay Special Protection Area (SPA) and Ramsar site, which are internationally-designated sites of special importance for their wildlife. It does not appear to be disputed that the proposed development would have the potential to adversely affect these designated sites, in combination with other developments, due to increased recreational pressure. Nor is it disputed that this impact could only be mitigated by means of a contribution to the Council's Strategic Access, Management and Monitoring (SAMM) scheme. A unilateral legal undertaking to this effect has been entered into by the appellant.
15. However, the submitted documents indicate that the appellant's freehold interest in the appeal property is subject to a legal charge in favour of a

mortgagee. In these circumstances, it is necessary for any undertaking to bind the mortgagee as well as the freehold owner, in order to ensure that the obligations contained within it would be enforceable against all of the relevant parties, and their successors in title.

16. In the present case, the deed has not been signed by the mortgagee, and is thus not enforceable against that party. Even though the required contribution is a relatively modest sum, the terms of the relevant legislation, under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), leave little or no room for discretion. Given that the justification for the proposed contribution has not been questioned, it would not be appropriate to rely on an undertaking that could prove ineffective.
17. In the circumstances, I find that the submitted undertaking cannot be relied on to satisfactorily mitigate the proposed development's potential impacts on the SPA and Ramsar site. In this regard, the scheme would conflict with TLP Policy SP29, which requires mitigation, through SAMM contributions, for all residential developments throughout the district.

Other matters

18. The appeal scheme would provide an addition to the local housing stock, of a type and size that is relatively unusual, meeting the needs of a one or two-person household, and with the potential to be adapted for use by elderly persons or the mobility impaired. The design would also ensure high levels of thermal efficiency. These factors count in favour of the development, but do not outweigh the harm that I have found.

Conclusion

19. For the reasons set out above, the proposed development would cause harm to the area's character and appearance, and to the living conditions of neighbouring occupiers, and would fail to ensure mitigation for its potential impacts on the nearby protected sites. In these respects it would fail to accord with TLP Policies QD02, QD03 and SP29. This conflict with the development plan is not outweighed by the scheme's benefits.
20. I have taken account of all the other matters raised, but none alters this conclusion. The appeal is therefore dismissed.

J Felgate

INSPECTOR