



Appeal Decision

Site visit made on 3 January 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2024

Appeal Ref: APP/E2205/W/23/3316830

Land between 3 - 23 Chart Road, Ashford, TN23 3HT

- 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 Frontier Estates & NHS Property Services against the decision of Ashford Borough Council.
 - The application Ref 19/01307/AS, dated 6 September 2019, was refused by notice dated 19 August 2022.
 - The development proposed is a 75 bed care home and 7 residential dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Before determination by the Council the application was amended to reduce the number of dwellings proposed from nine to seven.

Main Issues

3. These are:
 - The effect of the proposed development on the character and appearance of the surrounding area;
 - Whether internal and external living conditions for future residents would support their health and well-being;
 - The effect of the proposed parking arrangements on highway safety and living conditions of nearby residents; and
 - The effect on the integrity of the Stodmarsh Special Protection Area.

Reasons

4. The appeal site is unused but was previously part of the former Ashford Hospital. It is overgrown with a group of protected trees along the western boundary. The land rises up significantly from the Chart Road frontage to the rear of the site where it adjoins the housing in Kings Avenue. The immediate surroundings are residential. The proposed care home is intended for dementia care needs and would be sited on the front part of the site. The seven dwellings behind it would be accessed separately from Kings Avenue.
5. The site is earmarked for residential development by Policy S46 of the Ashford Local Plan 2030. The proposed institutional use would be compatible with this allocation. Furthermore, there is no dispute that almost all of the specific

expectations for the development of the site contained in the policy would be achieved by the proposal.

Character and appearance

6. The supporting text to Policy S46 observes that a scheme of two and three storey buildings would be most appropriate. The proposal would be consistent with this as well as with the scale of the domestic properties nearby. In this way it would respond to the prevailing character of the area in line with Local Plan Policy SP1. The care home would nonetheless be prominent owing to the topography of the site although it would be set back from Chart Road. A building of this type is likely to be large as an expression of its function and would be distinct from the individual houses nearby. As it would clearly stand in its own space it would not dominate the surrounding area.
7. The front façade would be enlivened by the recession and projection of the individual elements of the building as well as its cranked alignment. External materials would be limited to a single brick with contrasting corbel detailing. This would give rise to a coherent appearance. Visual interest and ornamentation would be provided by the accentuated fenestration with concrete surrounds. Accommodation at second floor level would be lit by a tall window that cuts across the eaves and terminates with a dormer.
8. These devices and the use of bays would avoid a flat and monolithic form of development. Rather than seeming monotonous the use of repetition in the elevations would provide a sense of grandeur and dignity further aided by avoiding a purely linear form. There would be sufficient richness in the detailing. The roof pitch would not be excessively shallow and this would form a proportionate constituent part of the overall composition.
9. Much of the area in front of the building would be taken up by parking and the proposed access. There would be a stepped arrangement up from the new footway along Chart Road but the scope for new landscaping would not be extensive. However, opportunities to soften the outlines of the building would be provided. In any event, there is no particular reason to screen the care home from view, especially as greenery is not a strong characteristic of Chart Road and other buildings are readily visible along its length.
10. As is to be expected, the care home would be different to the domestic buildings nearby in terms of its bulk, form and design. That does not mean that it would detract from the street scene but rather it would be understood as serving a particular purpose and so create its own distinctiveness and a positive sense of place. The building would not be bland and would integrate successfully into the locality. Indeed, the design and layout would be appropriate for the location as required by criterion d) of Policy S46.
11. Overall the proposed development would promote high quality design in line with Local Plan Policies SP1 and SP6. It would not harm the character and appearance of the surrounding area.

Living conditions

12. The Council highlights the *Housing our Ageing Population Panel for Innovation* report of 2009. However, this is not referred to in relevant development plan policies and none of its recommendations have been cited. Furthermore, the

care home is intended to cater for a particular section of the community rather than the elderly in general. Nevertheless, Policy SP6 has liveability as one of its criteria and Policy SP1 refers to the spaces around buildings. The National Planning Policy Framework indicates that developments should create places that promote health and well-being with a high standard of amenity.

13. The home is designed as a facility with ensuite rooms and shared internal and external spaces. The rooms are single aspect but are not meant to function as individual flats given that the intention would be to facilitate a communal way of living for residents. As a result, the level of internal lighting, outlook and ventilation within them would be adequate.
14. The corridors would largely be straight but this is required for operational and safeguarding reasons. However, their widths contract and expand at various points to provide for legibility and orientation for residents and this could be bolstered by interior décor. At second-floor level the lack of natural lighting to the corridor could be addressed by a condition requiring the introduction of a glass atrium. In addition to the larger lounge, dining area, café and cinema there would be smaller and more intimate hubs on each floor for residents to spend time and socialise.
15. Only a few of the flats would have their own private outside space. Residents would therefore mainly be reliant on the shared external area to the rear of the building. There are no standards in this respect. The garden area would be long and south-facing but would range between 8m and 14m in depth. Although at a lower level than the proposed houses, sunlight would be likely to penetrate into this area, especially in the summer months.
16. The sinuous external area would provide a variety of spaces including a kitchen garden, gazebo area, therapy garden, lounge terrace and dining terrace. These would be connected by a 'cherry walk' pathway with stopping points and intermediate seating areas. The block of woodland at the western end of the site would also be visible and so provide a natural feature of interest. The outdoor area would not be overly generous in size. However, it would provide a mixture of experiences and settings and would create a tranquil environment that residents and their families could enjoy when weather conditions allowed.
17. It is noteworthy that the proposal has been informed through consultation with a care provider and independently reviewed. Indeed, internal and external living conditions for future residents would support their health and well-being. There would be no conflict with the design requirements of Policy SP6 in this respect or with Policy SP1.

Highway safety

18. The car park would provide 25 spaces to cater for staff and visitors. The application indicates that there would be 35 full time staff although they would work shifts and so would not all require parking spaces at the same time. Given the location within the town and the availability of public transport, it is conceivable that staff and family members would travel to the site on foot or by public transport, especially in daylight hours. That would be less likely at night but this is when there would be few, if any, visitors.
19. There could be occasions when shifts overlap leading to higher short-term demand for spaces. Certain days of the year may also be especially popular for

people to visit their relatives within the home. However, to an extent, the availability of on-site parking may shape behaviours and travel choices. In any event, there are double yellow lines on both sides of Chart Road. Therefore, any overspill parking would be most unlikely to interfere with the free flow of traffic or prejudice the safety of road users along it.

20. Furthermore, the appellant's undisputed evidence is that a minimum of 27 on-street parking spaces were available within 200m of the site entrances at any one time. Just under half of the total potential spaces are in Kings Avenue or Sackville Crescent. Parking there would not be especially convenient for anyone wishing to access the care home on Chart Road although there is a pedestrian link. This would improve once the path through the wood is completed. There would nevertheless be capacity in the local area for any additional need for parking without jeopardising highway safety.
21. If the care home car park were full, parking in the surrounding streets could be a source of annoyance to existing residents. However, for most of the time, it is likely that the proposed arrangements would make sufficient provision to cater for the parking demand generated by the care home. As such, the living conditions of those nearby would not be compromised. Suitable provision would also be made for ambulances adjacent to the main entrance.
22. Local Plan Policy TRA3(b) expects a care home to provide a level of parking proportionate to its activity. As a guide the County Council's standards of 2006 indicate that a maximum of 30 spaces should be laid out. However, the highway authority's experience of existing care homes of this scale is of more significance. This indicates that the amount of parking proposed is appropriate. Therefore, there would be no unacceptable impact on highway safety.

Integrity of the Stodmarsh Special Protection Area

23. Stodmarsh is a Special Protection Area (SPA), a Ramsar site and a Special Area of Conservation. There are excessive nitrogen and phosphorus levels in the lakes and so the water within it is in an unfavourable condition and has the potential to deteriorate further. The appeal site is within the Stour catchment area where the advice of Natural England is that development should achieve nutrient neutrality.
24. The appellant's calculations are that the proposal would increase total nitrogen by 119.836kg per year and total phosphorous by 2.797kg per year. The assessment undertaken ignores the discharge that would have occurred from the former hospital. Given the length of time that the site has been vacant this is the correct approach. As a result, the proposal, in combination with other development, would have a likely significant effect on the SPA.
25. No mitigation is proposed to achieve nutrient neutrality. However, the appellant proposes a Grampian condition. This would be to the effect that the development should not be occupied until a planning obligation has been entered into to ensure a proportionate financial contribution is made to the delivery of the strategic wetland solution. In this respect the latest information is that two projects to deliver wetland to create a nutrient budget and enable the issuing of credits are the subject of ongoing discussion and negotiation. They are both commercially sensitive and subject to agreements and gaining the relevant permissions and permits.

26. Whilst progress may have been made in delivering these off-setting arrangements, there is insufficient evidence at the present time that the Borough-wide mitigation strategy will definitely come forward. There is insufficient assurance that these measures have been secured and would be implemented to satisfy the high degree of certainty that is required. In any case, Planning Practice Guidance indicates that a negatively worded condition limiting the development that can take place until an obligation has been entered into, is unlikely to be appropriate in the majority of cases.
27. The appellant also suggests that the appeal should be held in abeyance pending further events. However, the Planning Inspectorate's *Procedural Guide: Planning Appeals – England* confirms that appellants should not make their appeal until they are ready to proceed to a decision and there are no exceptional reasons to justify a delay in determining this appeal.
28. An appropriate assessment cannot be deferred to a later date. Following one undertaken in this case, the proposal would adversely affect the integrity of the Stodmarsh SPA because of the nitrogen and phosphorous that would be generated by it. By virtue of the Conservation of Habitats and Species Regulations 2017, agreement cannot therefore be given to the project.

Other Matters

29. The location of the proposal would be consistent with the strategic objectives of the Local Plan. These include focussing development at accessible and sustainable locations and making the best use of suitable brownfield opportunities. To this end, Policy SP2 indicates that the majority of new housing development will be in Ashford. By providing housing for older and disabled people the proposal would also meet the changing needs of the population as referred to by Policy SP1.
30. The chronology of events since 2018 show that there was pre-application engagement with officers, a briefing of Councillors and community engagement resulting in amendments to the scheme. Further changes were made once the application was lodged. The Framework indicates that proposals that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.
31. These matters weigh in favour of the proposed development but the effect on the habitats site is decisive and means that it cannot be allowed.
32. Many of the objections raised at application stage were reflected in the reasons for refusal and have been covered above. None of the other concerns amount to objections to the proposal for the reasons given in the report to Committee. Given that the appeal is to be dismissed there is no need for them to be addressed in any more detail.
33. The appellant claims that the Council cannot demonstrate a five-year supply of housing land and that paragraph 11 d) of the Framework is engaged. However, according to paragraph 188, the presumption in favour of sustainable development does not apply because an appropriate assessment has concluded that the project will adversely affect the integrity of a habitats site.

Conclusion

34. There are no objections to the proposal in terms of the character and appearance of the area, the living conditions of future residents or highway safety. As such, it would accord with the development plan. However, it is not possible to ensure the necessary mitigation to avoid an increase in the level of nitrogen and phosphorous in the water environment of the Stour catchment. This would drain into the Stodmarsh SPA and so adversely affect the integrity of this habitats site. This is the overriding consideration. Therefore, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR