



Appeal Decision

Site visit made on 22 January 2024

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2024

Appeal Ref: APP/J2210/W/23/3321157

38 Nursery Close, Whitstable, Kent CT5 1PD

- 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 and Mrs Coleman against the decision of Canterbury City Council.
 - The application Ref CA/23/00285, dated 16 February 2023, was refused by notice dated 3 April 2023.
 - The development proposed is new 1-bedroomed residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023 the Government published a revised National Planning Policy Framework (Framework) and the 2022 Housing Delivery Test (HDT). At my request, the Council provided what it considers to be its current housing land supply position. It also provided copies of documents relevant to Special Protection Areas (SPAs) referred to in reason for refusal (RfR) 2 in its decision notice. I have taken this into account in determining the appeal. The appellant had an opportunity to comment in these regards, none were received.
3. Notwithstanding reference to a 'residential annexe' in some of the appellants' documents, the application form confirms a 'dwelling' was applied for. This is how the Council considered the application and made its decision. I have, therefore, determined the appeal on this same basis.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the local area, having particular regard to its location.

Reasons

5. The appeal site, No.38 Nursery Close, is a semi-detached chalet bungalow with long rear garden. It is similar in these respects to other bungalows in the same row next to it on this side of the Close. Residential properties in this part of Whitstable are mainly arranged in linear, single-depth frontages facing roads with opposing or adjoining rear gardens. This includes houses along Ham Shades Green Lane with rear gardens backing onto one side of the site at right-angles and some with longer gardens that run past the site behind it. Most of these gardens in both of these roads are largely open with few domestic outbuildings, especially at the ends.

6. This regimented layout of dwellings and spacious rear gardens is locally distinctive, with the moderate sized timber chalet-style outbuilding at the end of the rear garden of No.38 an exception. It would be removed and this part of the site redeveloped with a one bedroom detached bungalow, including sub-divided into a separate plot and rear garden, accessed past the side of No.38 by demolishing a long garage and store. Subject to conditions the bungalow could be built using high-quality external materials.
7. However, there is no evidence that this piecemeal tandem siting of the bungalow behind No.38 would reflect residential backland development elsewhere in the Close or in the Lane. The bungalow would not be part of or in line with any row of dwellings in either road, nor would it face onto either road or be part of a streetscene. The residual rear garden of No.38 would be manifestly shorter and smaller in area than any I saw in the Close or the Lane. The new garden would be much shorter still, with a large part of the new plot taken up by the footprint of the bungalow.
8. There would be a trade-off between existing buildings to be removed from the site and construction of the bungalow. But not all of what exists is located on the same part or higher level of the site as would be the bungalow, so would not off-set it in an equivalent sense. Though only one bedroom, single-storey and relatively low, with a subservient relationship to No.38, there would be development across much of the plot, close to site boundaries. As such, it would appear cramped on the plot and in relation to the site overall.
9. Bridewell Park is a cul-de-sac of houses inserted behind the far ends of some properties in the Close and in the Lane. It is a planned comprehensive residential infilling of a substantially larger site. There is no evidence it encroached into, or incorporated, any original garden and albeit not in a straight row these houses form a linear frontage and face this road. While some of these houses and gardens can be seen from the site they are off-set to one side and sufficiently discrete or far away such that they have no meaningful visual or spatial relationship with the site. The proximity of these houses to surrounding houses is also appreciably looser than would be the tight relationship between No.38 and the bungalow. These houses do not therefore set a suitable context for development of the site in the manner proposed which would be distinctly different.
10. A 'single-storey dwelling to the rear of the host dwelling' permitted by the Council is far from the site, almost 2 miles, and that bungalow was consistent with an established backland setting of dwellings next to it¹. A 'structure of a similar size and scale' also permitted by the Council is in a different town and was an annexe, not a dwelling². Both cases are therefore not directly comparable to the current appeal, which I have determined on its individual planning merits.
11. Accordingly, the proposal fails to respect important aspects of the most relevant established residential development around it. As such, it would be manifestly out of keeping and incompatible with the prevailing pattern, sequence and layout of that development. While the position and size of the bungalow would not be intrusive in any significant public views, its presence and use would be plain to occupiers of adjoining properties as something

¹ CA/22/00631

² CA/22/01927

innately different to a domestic outbuilding. The absence of greater public visibility does not mitigate or overcome the intrinsic adverse impacts outlined above.

12. As a result, I find that the proposal would cause significant harm to the character and appearance of the local area, having particular regard to its location. Consequently, it is contrary to Policy DBE3 of the Canterbury District Local Plan 2017. This policy includes that development should protect or reinforce and positively contribute to the distinctive local context of the site to create attractive places considering townscape character and layout.

Other Matters

13. The proposal would meet the appellants' objective to downsize and live in the new bungalow, releasing No.38 for occupation by their children or other family members. But there is no evidence that this is the only way to achieve these aims and there is no mechanism to control occupation of either property in this way. These personal circumstances would last for the duration of the intended occupation, whereas the unacceptable change to the character and appearance of the local area would be permanent. The planning system operates in the wider public interest, not to meet private needs.
14. The appeal site is within a zone of influence of the SPAs³. These European sites are designated to protect habitat for important over-wintering bird species. Alone or in-combination with other development the net dwelling gain in this case would have a likely significant effect on the integrity of habitat and species in the SPAs due to recreational disturbance by residents visiting them. The appellants intended to provide a unilateral undertaking (UU) to secure a financial contribution towards implementing access management measures in accordance with the Council's adopted strategy⁴. No UU has been submitted. No other mitigation has been proposed and there is no suggestion mitigation is not required in this case.
15. The proposal is a revised scheme following a previous application for a house on the site refused permission by the Council⁵. The appellants have received pre-application advice from the Council and consider the proposal overcomes the Council's objections. I have also had regard to representations by some local residents who also objected for other reasons, but they are not material to my decision nor did the Council refuse permission for these reasons.

Planning Balance

16. In this case, under Framework paragraph 226, in order to benefit from the need to only demonstrate a 4 year supply of the Council's 5 year requirement (as clarified by Planning Practice Guidance⁶) there has to be a relevant emerging local plan with *both* a policies map and proposed housing allocation towards meeting housing need. The Council has consulted on a Regulation 18 Draft Canterbury District Local Plan 2020 to 2045. While it contains such an allocation it does not have a policies map, so the Council does not qualify under Framework paragraph 226 which does not therefore apply. As a consequence, a 5 year supply is required under Framework paragraph 77.

³ Thanet Coast and Sandwich Bay SPA and Thames, Medway and Swale SPA

⁴ Thanet Coast and Sandwich Bay Strategic Access Management and Monitoring Scheme (SAMM)

⁵ CA/07/01502

⁶ Paragraph: 056 Reference ID: 68-056-20240205

17. The Council considers that it can demonstrate a 4.48 year supply of deliverable housing sites including appropriate buffer⁷. This is not disputed by the appellants. On this basis, and notwithstanding the Council's position against the 2022 HDT, by virtue of footnote 8, Framework paragraph 11 d) is engaged in this appeal. The starting point is that planning permission should be granted.
18. The site includes garden land in a built-up area so by definition is not all previously developed 'brownfield' land⁸. Nonetheless, efficient use of suitable small sites for residential windfall development in Whitstable is acceptable in principle and the bungalow could be built relatively quickly. It would contribute to meeting the Council's housing requirement, sustain employment during construction and contribute to maintaining services and facilities in Whitstable. Subject to conditions the proposal could secure biodiversity net gains on the site, including new landscaping. These outcomes would align with objectives of the Framework to significantly boost the supply of homes, meet people's living needs, support the economy and enhance the natural environment. In my view, these notable social and economic benefits in this case each have modest weight in support of the proposal.
19. The site is not in a conservation area, does not contain a listed building and is not in the setting of either. The proposal does not relate to trees subject to a Tree Preservation Order, is not at risk of flooding and there is no evidence of contaminated land. The bungalow would provide suitable internal living accommodation and subject to conditions could incorporate appropriate energy efficiency measures, make suitable provision for surface water drainage, access, car parking and secure cycle storage. The proposal would not adversely affect the living conditions of the occupiers of any nearby dwellings. The absence of harm in these regards is a neutral factor in my decision.
20. However, the proposal would cause unacceptable harm to the character and appearance of the local area. This would undermine the Council's development plan objectives in this respect. In light of the housing land supply position, reduced weight applies to these policies most important for determining the appeal. Nonetheless, they are broadly consistent with aims of the Framework to achieve well-designed places; including that development should add to the overall quality of the area, be sympathetic to local character and surrounding built environment and maintain a sense of place using the arrangement of streets, building types and layout to create attractive, distinctive places to live.
21. Consequently, notwithstanding the housing land supply position and the scale of housing shortfall, I consider that the support given in the Framework to delivering housing is not at the expense of ensuring that residential development is appropriate in relation to its surroundings. In my view these important social and environmental considerations have substantial weight against the proposal.
22. In this appeal policies in the Framework protect an area or asset of particular importance (the SPAs). As the competent authority it would ordinarily be necessary for me to undertake Appropriate Assessment⁹. However, the adverse impacts of granting planning permission would significantly and demonstrably

⁷ Authority Monitoring Report April 2022 to March 2023

⁸ Framework Annex 2: Glossary

⁹ Conservation of Habitats and Species Regulations 2017 (as amended)

outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Consequently, the presumption in favour of sustainable development does not apply in this case.

23. Since I intend to dismiss the appeal, even if the proposal did not adversely affect the integrity of the SPAs, so not provide a clear reason for refusing the development, there is therefore no need for me to consider the SPAs any further. This is because it would not affect my decision or alter the outcome of the appeal.

Conclusion

24. The proposal conflicts with the development plan overall and with relevant provisions of the Framework. There are no other material considerations to indicate that the decision should be taken other than in accordance with the development plan¹⁰. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR

¹⁰ Section 38(6) Planning and Compulsory Purchase Act 2004 (as amended) and Framework paragraph 12