



Appeal Decision

Site visit made on 19 January 2024

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2024

Appeal Ref: APP/X2220/W/23/3318994

Whiteville, Lawn Road, Walmer, Kent CT14 7ND

- 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 Griffiths of Arncliffe Ltd against the decision of Dover District Council.
 - The application Ref 21/01606, dated 19 October 2021, was refused by notice dated 25 October 2022.
 - The development proposed is erection of 2no. detached dwellings (existing outbuildings to be demolished).
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Decision

1. The appeal is allowed and planning permission is granted for erection of 2no. detached dwellings (existing outbuildings to be demolished) at Whiteville, Lawn Road, Walmer, Kent CT14 7ND in accordance with the terms of the application, Ref 21/01606, dated 19 October 2021, subject to the conditions set out in the schedule below.

Preliminary Matters

2. During the consideration of this appeal the revised National Planning Policy Framework 2023 (the Framework) has been published. The main parties have had the opportunity to comment on the relevance of the Framework to this appeal.
3. The Draft Dover District Local Plan (the DDDL P) is currently under examination and was subject to hearing sessions at the end of 2023. Its policies do not yet form part of the development plan, however I have had regard to the emerging policies referred to by the Council below.
4. A Unilateral Undertaking has been submitted with the appeal, dated 22 February 2024 (the UU). This relates to mitigation for effects on habitat sites and this document has been taken into account in the determination of the appeal.
5. The description of development in the banner heading above is taken from the Council's decision notice and the appeal form, as these more concisely describe the proposed development.
6. The appeal is accompanied by drawings which amend some aspects of the proposal. Those amendments relate primarily to the proposed facing materials and window openings, and provide additional supporting information. Given the limited nature of those revisions, and as the proposed development would

remain substantially the same, I am satisfied that there would be no prejudice in considering the appeal on the basis of those revised plans.

Main Issues

7. The main issues are the effects of the proposal on: (i) the character and appearance of the area, and (ii) the living conditions of neighbouring occupiers, with particular regard to the outlook experienced from the property known as Ilex.

Reasons

Character and Appearance

8. Lawn Road is a narrow, gravel track road which is accessed via a gap between a group of historic properties which front onto Dover Road. The existing houses on Lawn Road vary significantly in their age and appearance, displaying different heights, roof forms and materials. The properties also have different set backs from the edge of the road, with some incorporating pockets of soft landscaping and others having areas of hard surfacing for parking. Together this strong variation in the existing buildings contributes positively to the unique character of Lawn Road, making it visually distinct from the other more uniform street layouts in the surrounding area.
9. The proposed houses would be distinctly modern and unlike others which exist nearby. The Framework is clear, however, that developments should be sympathetic to local character and history, while not preventing or discouraging appropriate innovation or change. The proposed houses would have similar eaves levels and ridge heights to the properties either side, and the roof forms, despite being asymmetrical, would be hipped at the front, reducing their prominence in views from Lawn Road. The building lines above the ground floor level would respect those of the properties on this side of the road, being staggered but set behind the front elevation of Whiteville, giving a feeling of space between the properties.
10. The proposed ground floor accommodation would extend to the side boundaries of each plot and beyond the established front building line, however, from Lawn Road these would be sunken elements which would not appear visually prominent. Details of their materials and soft landscaped roofs, which would be key to their integration into the character of Lawn Road, could reasonably be secured by condition. For these reasons, the height, massing and positioning of the proposed houses would sit comfortably within this context. The architectural approach and window alignments would also differ from those properties nearby. However, given the varied appearance of other properties, the proposal would contribute positively to the visual interest of Lawn Road.
11. The proposed rear elevations would be visible from Knoll Place, where they would appear alongside the other rear elevations of properties on the northern side of Lawn Road, including that of the approved dwelling to the other side of Whiteville once completed¹. The proposed accommodation in the roofslopes would be apparent and the roof form appear more prominent, particularly given the raise in ground levels from Knoll Place. However, given the position of the proposed properties towards the southern side of the site, and the context of other rear elevations and varied roof forms, they would not appear unduly

¹ Council ref 19/01585

imposing or visually harmful. There is not substantive evidence to suggest the proposal would be apparent in wider views from the surrounding area. Even if glimpses were possible, given the above attributes, its effects would not be harmful.

12. In conclusion on this main issue, the proposal would adequately respect the character of the surrounding area. It would comply with Draft Policy PM1 of the DDDL P which relates to high quality design and requires, among other things, awareness of site context and compatibility with neighbouring buildings. The proposal would also comply with the design objectives of the Framework and I do not find that harm to the local area would occur as set out in paragraph 72.

Living Conditions

13. The appeal site adjoins a number of residential properties, which include the two storey semi-detached property known as Ilex. Ilex has windows and openings in its side elevation which currently enjoy uninterrupted outlook over the appeal site. This includes a large first floor bedroom window and a similar sized window which serves a kitchen-diner on the ground floor. These are set towards the back of the building and these rooms are also served by rear facing windows which look over the rear garden of Ilex.
14. The outlook from these windows, and the rooms which they serve, would undoubtedly change as a result of the proposal, which would introduce a new flank wall in front of them. However, given the presence of other rear and front facing windows to that property, together with the distance of separation to the new flank wall, the effects on the outlook from Ilex when considered as a whole, would be acceptable.
15. There is not substantive evidence to demonstrate that there would be a harmful loss of daylight or sunlight to Ilex. Some reductions would inevitably occur given the existing open nature of the site and the proposed single storey element closest to the boundary would rise above the height of the boundary wall to varying degrees with the slope of the land. However, given the presence of other windows in other elevations of Ilex as set out, together with the separation provided by the existing driveway and in the absence of evidence to the contrary, the proposal would be acceptable in this respect. Any legal 'Right to Light' would be separate to the planning process and Planning Practice Guidance (the PPG) states that the courts have generally taken the view that the protection of purely private interests such as loss of private rights to light could not be material considerations. Overall, while there would be effects on Ilex, these would not result in unacceptable living conditions.
16. There would similarly be effects on the outlook and natural lighting of Whiteville, which has some windows facing towards the appeal site. Given the nature of those windows and their distance from the proposal, I have no strong reason to find the effects on the living conditions of those occupants as a whole to be unacceptable.
17. The proposal would be apparent from other properties in the surrounding area, including those on Lawn Road such as Pleasant Cottage and those to the north east. However, given the distance of separation from those other properties, the scale of the proposal and existing conditions, the effects would not cause unacceptable harm. I do not have details of the 1992 proposal relating to

Russleigh for additional windows and cannot be satisfied that the circumstances in that case were the same as those before me.

18. Overall, the proposal would have acceptable effects on the living conditions of occupants of the nearby properties. It would comply with Draft Policy PM2 of the DDDL, which requires that development does not lead to unacceptable living conditions for neighbouring properties. The proposal would comply with the objectives of the Framework insofar as it requires decisions to ensure healthy living conditions.

Other Matters

19. The appeal site lies within the Zone of Influence of the Thanet Coast and Sandwich Bay Special Protection Area (SPA), which is afforded protection under the Habitats Regulations². This incorporates a variety of habitats which are uncommon in Europe and its qualifying features include its populations of breeding and non-breeding birds. Conservation objectives for the SPA include the need to ensure that the integrity of the site is maintained or restored, and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The key threats to the SPA have been found to include recreational disturbance from the visiting public.
20. The proposal would introduce new residents within the Zone of Influence, who may visit the SPA for recreational purposes. As such, it would have a likely significant adverse effect on those qualifying features, either alone or in combination with other projects. Adopting the necessary precautionary approach, it could compromise the conservation objectives and lead to an adverse effect on the integrity of the site.
21. The Thanet Coast and Sandwich Bay SPA Strategic Access Mitigation and Monitoring Strategy (SAMM) provides a strategic approach to mitigate the potential in-combination impacts of new housing development in the vicinity of the SPA. It sets out that the SAMM will be funded by financial contributions from proposed residential development within the Zone of Influence.
22. Draft Policy NE3 of the DDDL seeks a financial contribution for mitigation of these effects. While the policy is in draft form, a precautionary approach is nonetheless required where effects on habitat sites are concerned, and likely significant effects on the SPA cannot be ruled out here. I note Natural England's support of the approach set out in the draft policy and I have no strong reason to believe that a financial contribution would not be successful in achieving the required mitigation.
23. The UU would secure the financial contributions towards the implementation of the SAMM, as well as monitoring and legal fees which arise from the need for the obligation. Based on the evidence, this mitigation would ensure that adverse effects on the integrity of the SPA would be avoided and I note the Council consider the UU to be appropriate. I am also satisfied that the obligation would meet the relevant tests for an obligation set out in the CIL Regulations³ and the Framework. The proposal would therefore comply with Draft Policy NE3 which relates to this matter.

² The Conservation of Habitats and Species Regulations 2017

³ Community Infrastructure Levy Regulations 2010 as amended

24. The Council have not identified any relevant development plan policies in this case, only the Framework and policies of the emerging local plan. Therefore, paragraph 11d) of the Framework is relevant to the appeal. I have not found that the policies in the Framework which protect areas or assets of particular importance provide a clear reason for refusing the development proposed, nor have any adverse impacts of granting planning permission been found. As such, the proposal would benefit from the presumption in favour of sustainable development set out in the Framework, and this is a material consideration which weighs further in favour of the grant of planning permission.
25. Lawn Road is a private road, and there may be other matters which the appellant would need to address before they could carry out the proposed development, relating for example to covenants and rights of access. However, these do not amount to reasons to withhold or delay the grant of planning permission.
26. There are substantial local concerns relating to highway safety on Lawn Road and its junction with Dover Road. While I can appreciate those concerns, there is not substantive evidence that the proposal would have unacceptable impacts on this existing situation, even if some additional vehicle movements were to occur on Lawn Road. Matters relating to the enforcement of existing highways restrictions are a matter for the relevant highways authority. I note earlier comments dating from the 1960s onwards which include comments of local planners, a condition imposed by an Inspector and alleged established principles for Lawn Road. Given the age of the references given, together with the absence of full details of the proposals to which they relate and the policies and standards under which they were considered, they do not provide a justification to alter the above judgement. Development proposals must inevitably be assessed on their own merits and circumstances at that time.
27. The appellant does not dispute that the development would necessitate the removal of a cherry tree. The Council's Arboricultural Officer has raised no objection to the proposal and, subject to a suitable scheme of soft landscaping which adequately respects the character of Lawn Road, the proposal would be acceptable in this respect. I note the dispute regarding whether or not the appeal site is previously developed land. However, it is not a matter I need to consider further, as reaching a view on it would not change the outcome of the appeal.
28. Communication between the appellant and local residents was clearly not as those residents had hoped and an alternative scheme may have been more favourable to those who live nearby. However, for the reasons set out above, the proposal would be compliant with the relevant emerging policies of the DDDLP and the Framework. The level of information submitted with the appeal is considered adequate for its assessment. There is not evidence of a policy requirement for the proposal to be wheelchair accessible and this would be a matter considered further at the building regulations stage.

Conditions

29. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the PPG. For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.

30. For environmental reasons, a condition is necessary to secure details of sustainable drainage for the site. This needs to be a pre-commencement condition to ensure it is addressed at an early stage. For reasons of visual amenity, details of the external materials and a scheme of hard and soft landscaping are also necessary. To ensure appropriate parking and in the interests of highway safety, the parking spaces shown are conditioned to be made available and retained, including that shown for Whiteville.
31. Given the restrictions on side facing windows on upper levels already imposed by the General Permitted Development Order relating to their height and obscurity, conditions further restricting side windows would not be necessary. A condition has also been suggested to prevent further development on the site. However, based on the evidence, I see no reason why the proposed properties should be subject to tighter restrictions than others as set out in permitted development legislation.
32. In light of the assessment above, conditions requiring vehicular and pedestrian access only from Knoll Place, or controlling the address to be assigned to the properties, would not meet the current tests for conditions, particularly in terms of reasonableness and necessity. The submitted drawings show the flat roof elements to have sedum roofs and without any balustrades. As such I do not find it necessary to add a further restriction on the use of those areas.
33. There is not evidence that a condition relating to details of foul drainage are necessary for planning purposes, and Southern Water would require a separate application for any associated connection to the public foul sewer.

Conclusion

34. For the above reasons, having taken account of the development plan as a whole, the approach in the Framework, along with all other relevant material considerations, the appeal is allowed.

C Shearing

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P01A, P02A, P06A, P07A, P10F, P11E, P12F, P13D, P14F, P20F, P21F, P25F, P26F, P27F, P28F, P30E.
- 3) Prior to the commencement of development, details of a sustainable drainage system for the disposal of the site's surface water shall be submitted to and approved in writing by the local planning authority. This shall include a timetable for implementation and details of future maintenance. The development shall be carried out and maintained in accordance with the approved details.
- 4) Development above the ground level shall not take place until details, including samples where appropriate, of the materials to be used on the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Prior to the first occupation of any part of the development, a scheme of hard and soft landscaping for the site shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and undertaken within 12 months of the completion of the development. Any planting which, within a period of five years of completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species.
- 6) The vehicle parking spaces shown on the approved plans to the north of the site shall be provided in full prior to the first occupation of the house to which they relate. The parking space shown on drawing P10F to be used in relation to the property of Whiteville, shall be available for use in connection with that property prior to the first occupation of 'House 2'. Those spaces shall remain available for use as such at all times.

End of Schedule