



Appeal Decision

Site visit made on 6 March 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2024

Appeal Ref: APP/E2205/W/23/3322385

40 Park Road, Kennington, Ashford, Kent TN24 9DL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Reardon (SJR Land Investments Ltd) against the decision of Ashford Borough Council.
 - The application Ref is PA/2022/2223.
 - The development proposed is the demolition of existing bungalow and garages and construction of 2 no. detached houses with associated parking.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Habitats and Species Regulations 2017 (the Habitats Regulations) require consideration to be given to the Stodmarsh nature conservation sites, regardless of the Council's reasons for refusal. Accordingly, although the appellant invites me to give the issue no weight, to do so would be contrary to the legislation and would prevent habitats that warrant protection from receiving it.
3. Whilst the issue of the Stodmarsh nature conservation sites was not a reason for refusal, it was understood by the main parties to be a material consideration during the planning application and appeal processes. Indeed, a Nutrient Assessment was submitted in support of the application; it was identified as an issue in the Council's appeal statement and the appellant took the opportunity in their final submission to respond to the points made. Taking all of the above into account I am satisfied that the appellant has been aware of the matter for some time and not been prejudiced by it being addressed in this decision.

Main Issues

4. Therefore, the main issues are the effect of the proposed development on a) the Stodmarsh nature conservation sites; b) the living conditions of neighbouring occupiers, with particular regard to the loss of sunlight/daylight; and c) the character and appearance of the area.

Reasons

The effect on the Stodmarsh nature conservation sites

5. The main parties do not disagree that the appeal site is located within the River Stour catchment. Natural England has advised that certain types of

- development within the catchment area are likely to result in increased levels of nitrogen and phosphorus being discharged into the Stodmarsh Lakes, which are nature conservation sites protected under European legislation.
6. Therefore, in order to avoid an adverse effect on the protected sites, proposals within the catchment area or which discharge to particular Wastewater Treatment works within the catchment area must demonstrate that they would achieve nutrient neutrality.
 7. The general advice is that mitigation within a development site should be considered first, in order to minimise the contribution from the development itself. Where it is not possible to provide or secure the necessary mitigation in this way, then mitigation on land outside the development can be considered.
 8. A Nutrient Assessment in support of the proposal was submitted to the Council before it made its decision. However, when the application was determined it seems that discussions on this issue pointed towards off-site mitigation measures being a likely requirement if the proposal was to achieve nutrient neutrality.
 9. There is no substantive evidence before me to indicate that the development does not require off-site measures or that any have been identified or have been shown to be deliverable. In this respect I note that the appellant does not directly dispute the need for off-site measures.
 10. It is pointed out to me that the Council is yet to bring forward a Borough Mitigation Strategy, which appears to be the off-site measure being relied upon by the appellant. I appreciate that the lack of such a strategy may make it difficult for the appellant to demonstrate nutrient neutrality, but this does not negate my duties under the Habitat Regulations.
 11. Furthermore, even if a strategic solution were to exist, in this specific case, although the appellant is aware of the need to address the matter, and may be willing to make the necessary contribution, there has been no planning obligation or other mechanism submitted to secure that contribution. That the Council has not suggested a planning obligation does not prevent such mechanisms coming forward from an appellant if appropriate in planning terms.
 12. As the 'Competent Authority' under the Habitats Regulations, I am required to undertake an Appropriate Assessment (AA) to determine if the proposal would affect the protected sites. However, without the necessary evidence and mitigation details before me I cannot be sure that the additional wastewater generated by the development, either on its own or in combination with other plans or projects, would not contribute to a further deterioration in the water quality of Stodmarsh nature conservation sites. This prevents me from completing an AA that finds positively in favour of the scheme on this issue.
 13. The proposal would therefore not accord with the Habitat Regulations nor Paragraph 186 of the National Planning Policy Framework, which says, amongst other things, that if significant biodiversity harm cannot be avoided, then planning permission should be refused. This weighs significantly against the proposal.

Living Conditions

14. The proposed north eastern dwelling would be positioned closer to, and more in line with, No. 38 Park Road than the existing appeal building. Although the appellant suggests the neighbour's side elevation is effectively a blank wall, it appears that there is a small side window on this elevation at ground floor level. This is confirmed by the neighbour in their representations on the appeal.
15. The neighbour suggests that the proposal would result in a loss of light to the room which the window serves. Although the window appears to be secondary in nature and is close to the side boundary, it seems likely that it would be affected by the proposal. There is no substantive evidence before me to confirm the nature of the room nor that any impacts would not be harmful.
16. The south western dwelling would be approximately a metre from the boundary with No. 42 Park Road, a single storey dwelling. This new dwelling would be positioned such that the majority of its length would extend beyond the rear elevation of No.42. This proposed dwelling has been designed with an asymmetrical roof so that the eaves closest to the boundary would be set lower than the other side. This also ensures the highest part of the roof is set further away from the boundary with No.42.
17. Nevertheless, the position and scale of the proposed dwelling would represent a significant change from the existing situation, with the new dwelling being a notable presence when viewed from this neighbour's rear garden.
18. During the early part of the day, there would be a corresponding effect on the sunlight travelling across the appeal site through to the neighbour's rear garden. This would also affect some of the light received to the rear kitchen window although it is set well in from the boundary and retains an open aspect to the west, so any effect would be limited. The neighbour's obscurely glazed side door and window, which appear to also serve the kitchen area, may also experience a small change in the sunlight and daylight received but the overall effect on the kitchen would not be of a level to warrant rejection of the proposal.
19. Later on in the morning and as the sun passes overhead, whilst the proposed dwelling would remain visible, the overall effect is likely to be less noticeable. I am satisfied that other windows on the rear elevation would be unaffected by the proposal.
20. There are other windows on the neighbour's side elevation which are set forward of the new dwelling and so unlikely to be adversely affected by the building itself. These windows would however be close to the proposed car parking for the nearest proposed dwelling. Given that the parking would replace the existing driveway, on which cars could park, and given the distances involved and retention of some boundary screening I am satisfied that this change would not be unduly impactful.
21. Whilst the proposal would represent a notable change to the environment around No.42, I have not found the effect of these changes to be of a level that would lead me to reject the proposal. However, there remains doubt concerning the side window of No.38 and little substantive evidence to indicate the effect the proposal would have on it and the living conditions of the residents. This means that at this stage I am unable to conclude with sufficient

certainty that there would not be a significant adverse impact through a loss of sunlight/daylight.

22. Thus, I am unable to conclude that the proposal as a whole complies with Policies HOU3a and SP01 of the Ashford Local Plan (2019) which require, amongst other things, that buildings have a positive relationship with the space around them and that developments do not create a significant adverse impact on existing residents.

Character and Appearance

23. The wider area has a mixed residential character, in which there is no prevailing style, design or size of dwelling. Similarly, there is no uniformity in plot sizes or building lines. However, buildings are generally either one or two storeys in height and have front gardens that can accommodate vehicle parking. Thus, the character is of a suburban residential street.
24. The proposed dwellings would be two storeys in height. They would not be of matching design although would use similar materials to each other and would include similar aesthetics and detailing such as the window designs, integral covered front porch and front gables. The current building line would be broadly maintained with a slight step in alignment between the two houses. None of these factors would be visually jarring or out of keeping with other nearby properties.
25. The proposal inherently involves an intensification of built form on, and activity of, the site. The houses would be narrower than the buildings either side and would be adjacent to a bungalow to the south west. However, there is a sufficient mix of building styles, designs and sizes that the width of the proposed houses would not appear manifestly at odds with their surroundings. Similarly, as part of the prevailing street scene there are bungalows positioned next to two storey dwellings, as indeed is the situation for the existing appeal property.
26. The existing vegetation to the site frontage would be removed to allow for two vehicular crossovers. As a result, the front gardens would be more open and large parts given over to car parking. Some planting is shown to the front areas and this could be controlled by condition. Such a layout would not be dissimilar to a number of other properties in the area, which from the representations received may be in response to limited on-street parking capacity.
27. Overall, whilst the proposal represents a notable visual change to the site and a more intensive use of the land, it cannot be said to be unduly out of keeping with the prevailing character and appearance of the area.
28. Therefore, I find the proposal to accord with Policies HOU3a, SP1 & SP6 of the Ashford Local Plan (2019) insofar as they seek to ensure development is compatible with the character and density of the surrounding area.
29. In this respect the proposal would also accord with Paragraph 135 of the Framework, which amongst other things, seeks to ensure developments are sympathetic to local character.

Other Matters

30. The Council has not objected to the principle of the development, but this does not mean that the proposal is acceptable and does not in any event absolve me from making an assessment as to its effects in regard to the main issues of the case.

Planning Balance and Conclusion

31. There is no dispute between the main parties that the Council cannot demonstrate a five year supply of deliverable housing land. On this basis Paragraph 11 of the Framework would be engaged.
32. However, the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an AA has concluded that the plan or project will not adversely affect the integrity of the habitats site. For the reasons set out above, I have been unable to conclude that the proposal would not adversely affect the integrity of such a site.
33. Notwithstanding the harm to the protected site, I have also been unable to conclude that the proposal would not harm the living conditions of existing neighbours. Although I have not found harm in relation to the effect of the proposal on the character and appearance of the area, this represents a lack of harm and so is neutral in the overall balance.
34. Whilst there would be some economic and social benefits of the scheme, considered overall the development would not only conflict with the provisions of the Framework and Habitat Regulations but would also cause harms which would conflict with the development plan when taken as a whole. There are no other material considerations which lead me to determine the appeal other than in accordance with the development plan.
35. Therefore, I conclude that this appeal should not succeed.

Stewart Glassar

INSPECTOR