



Appeal Decision

Site visit made on 26 April 2024

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2024

Appeal Ref: APP/Z2260/W/23/3321666

Cable Hut, Dumpton Bay, Western Esplanade, Broadstairs, Kent CT10 1TD

- 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 LEFA Property Ltd against the decision of Thanet District Council.
 - The application Ref F/TH/22/1260, dated 12 September 2022, was refused by notice dated 8 November 2022.
 - The development proposed is the conversion of disused cable hut into dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The additional detailing to the proposed gable and the timber louvres shown on the amended drawings would represent a very small change to the proposal. The Council and interested parties have had the opportunity through the appeal process to make representations on those drawings. As such, their interests would not be prejudiced by me taking them into account in my assessment.
3. The Heritage Appeal Statement, Preliminary Ecological Appraisal (PEA) and Building Condition Report, do not amend the proposed development. The Council and interested parties have had the opportunity through the appeal process to make representations on them. In having regard to caselaw and the appeals procedural guidance¹, I am satisfied that no prejudice would be caused to any party by me taking them into account in assessing this appeal.
4. Compared to the previous iteration of the National Planning Policy Framework ("the Framework"), there are no changes relevant to the substance of this appeal in the recently revised version. Therefore, the parties to this appeal will not be prejudiced by the changes to the national policy context. All references to the Framework in this appeal relate to the revised document.

Main Issues

5. The main issues in this appeal are:
 - Whether the proposed development would affect the integrity of the Thanet section of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site, as a protected European site of nature conservation importance.

¹ Planning Inspectorate Procedural Guide: Planning appeals – England (Updated 28 May 2024)

- The effect on biodiversity and protected species, with particular regard to Bats.
- The effect on the significance of the appeal building as a non-designated heritage asset (NDHA).
- The effect on the character and appearance of the area, with particular regard to its location within an area of high townscape value.
- Whether adequate living conditions for future occupiers would be provided with particular regard to interior space.
- The effect on land stability and coastal erosion.

Reasons

Protected European site of nature conservation importance.

6. The SPA is subject to statutory protection as a European site of nature conservation importance under the Conservation of Habitats and Species Regulations 2017 as amended ("the Regulations") and is used by large numbers of migratory birds. The particular species for which it is designated are populations of over-wintering Turnstones and European Golden Plover of European importance. The main threat to the integrity of the SPA is the disturbance of feeding and roosting wading birds by recreational activities, particularly the use of the beaches.
7. The evidence before me, including the Thanet District Council Strategic Access Management and Monitoring Plan (SAMMP), suggests that occupation of the appeal development is, due to its location, likely to increase recreational disturbance to the qualifying bird species in the SPA, as future residents visit the coastline for recreational purposes. Consequently, it is likely to have a significant adverse effect on the integrity of the SPA, both on its own and cumulatively with other housing developments.
8. As the competent decision making authority under the Regulations, it is my duty to undertake an Appropriate Assessment (AA). This is to consider whether I have certainty that measures could be put in place to avoid or mitigate the proposal's likely significant adverse effect on the SPA, with the aim of maintaining or restoring at favourable conservation status, the natural habitats and species of the SPA.
9. The SAMMP provides a strategic scheme to mitigate the potential in-combination effects of new housing development on the integrity of the SPA. This scheme includes access management, a Warden's service, legal enforcement and education, interpretation and signage, and the provision of sites attractive for dog walking. There would also be provisions for surveys of the SPA and the monitoring of visitor numbers and bird populations.
10. Policy SP29 of the Thanet District Council Local Plan, Adopted July 2020 ("the TDCLP"), requires new residential development to contribute to funding the delivery of the SAMMP by making payment of a financial contribution, secured by a planning obligation. The tariff for contributions is set out in the Thanet Strategic Access Management and Monitoring Plan – Notes to Accompany Tariff for 17,140 home April 2017. Natural England's consultation response on the proposal confirms that it would have no adverse effect on the SPA as a European nature conservation site, provided an AA confirms that the agreed

strategic mitigation measures are secured by planning conditions or obligations.

11. The appellant has expressed a willingness to make payment to the Council of the requisite financial contribution towards the delivery of the SAMMP to mitigate the proposal's likely significant effects on the nature conservation interests of the SPA. However, there is no legally binding mechanism before me to properly secure it. In having regard to the Planning Practice Guidance² a condition cannot require the payment of money to the Council and the evidence before me does not demonstrate any exceptional circumstances that would justify imposing a negatively worded planning condition to require a planning obligation to be entered into.
12. In having regard to my duties under the Regulations, and in taking a necessarily precautionary approach to this matter, I conclude through my AA that the appeal proposal would have an adverse effect on the integrity of the SPA. No alternative solutions, imperative reasons of overriding public interest and no other compensatory measures have been put forward by the appellant.
13. Consequently, the proposal is contrary to TDCLP Policy SP29, the requirements of which are set out above, and Framework Paragraphs 180 and 186 insofar as they require decisions to protect sites of biodiversity value in a manner consistent with their statutory status, and if significant harm to biodiversity cannot be avoided, adequately mitigated, or as a last resort compensated for, then planning permission should be refused.

Protected species

14. Bat species are a European protected species under the Regulations, and several bat species are of 'principal importance' under the Natural Environment and Rural Communities Act 2006 (the NERC Act). As such, they are afforded full protection under UK and European legislation.
15. The appellant's PEA assessed the appeal building as having a low suitability for roosting bats. However, the adjacent scrub vegetation was identified in the PEA as providing suitable bat commuting features. To conclusively determine the presence or absence of bats in accordance with established good practice guidelines, the PEA recommends that dusk emergence or pre-dawn re-entry surveys of the building are carried out by a suitability qualified ecologist. I see no basis on the evidence before me to disagree.
16. The advice in Circular 06/2005 'Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system', states that *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances..."*.
17. Therefore, before permission could be granted, the additional survey work recommended in the PEA should be completed and any necessary measures resulting to protect biodiversity, including any bats or their roosts, should be identified and secured through conditions. As such, this is not a matter that

² Paragraph: 010 Reference ID: 21a-010-20190723

could be satisfactorily addressed by a planning condition and there is no substantive evidence before me to demonstrate any exceptional circumstances that would justify departing from the advice in the Circular referred to above.

18. In having regard to my duty under the Regulations and the NERC Act, I conclude on this issue that the proposed development would harm protected bat species. It would therefore conflict with Paragraphs 180 and 186 of the Framework, which state that development should minimise impacts on biodiversity and local planning authorities should refuse planning permission if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for.

NDHA

19. On the evidence available, the appeal building's historic interest appears to derive from its original purpose of housing submarine telegraph cables at the point of landfall between England and Belgium. Architecturally, it is a small building with a plain appearance and a somewhat austere character, which whilst likely to reflect a need for robustness against the coastal elements, does not overtly signify its original function. Instead, this is subtly signalled by a freestanding sign nearby. The interior of the building has been stripped out and was devoid of any notable fixtures and fittings associated with telegraph cables.
20. The evidence suggests that Historic England declined to include the appeal building within the National Heritage List for England. Neither the TDCLP or the Broadstairs and St. Peter's Neighbourhood Development Plan 2018-2031, May 2021 ("the NP") include the appeal building in a list of local heritage assets. Nonetheless, based on the evidence before me the building has historical interest in terms of its contribution to the understanding of its original historic function in early telegraph communications, sufficient to be considered as a NDHA. The appeal building's significance therefore lies primarily in its historic use and association with the early forms of telegraph communications, whereas its simple and functional architectural style makes a lesser and comparatively minor contribution to its overall significance as a NDHA.
21. The appeal proposal presents an opportunity to incorporate interpretive information to better reveal its historic interest and significance. The proposed hip-to-gable roof enlargement would add only a modest amount of additional bulk to the building. Sympathetic materials would be used, including reinstating original plain tiles, which would have a small beneficial effect to its architectural significance.
22. Despite its high quality and attractive traditional timber framing, the proposed glazed gable would nonetheless cause a modest dilution of the appeal building's functional and simple appearance. Whilst the other elevations of the building would largely retain their plain and simple appearances, the fully glazed gabled enlargement, would cause a small degree of harm to the architectural significance of the building. However, these alterations would facilitate an increase in the floor space of the building for habitation, access to light and outlook for future occupiers without expanding the building's footprint. As such, the harm is convincingly justified by reference to the appellant's alternative options for enlarging the building.

23. Despite suggestions of non-residential uses of the appeal building, I am not persuaded on the evidence before me that such uses are likely to come forward, particularly given its scale. I cannot be assured on the evidence before me that a non-residential use of this small building would be unlikely to result in the accumulation of paraphernalia, such as bins, or alterations or enlargements to the building. The Council's development plan does not appear to safeguard the building for a non-residential use or require demonstration that such a use would be economically unviable. There is no certainty that non-residential uses would be granted planning permission should it be required.
24. On the evidence before me, residential use of the appeal building would be the optimum viable use and would be expected to fund the repairs identified as in the appellant's condition survey, together with securing its ongoing maintenance and future longevity as a NDHA.
25. Taking all the above into account, the proposal would secure reuse of the building and has the potential to better reveal its historical significance. However, the proposal would also cause a small degree of harm to its architectural significance as a NDHA, contrary to TDCLP Policy SP36, insofar as it seeks to protect the historic environment. Framework Paragraph 209 requires the scale of harm to a NDHA to be taken into account in determining planning applications and weighed in a balanced judgement. TDCLP Policy HE03 requires proposals affecting a NDHA to be assessed by reference to Framework. Therefore, I will return to this matter in the planning balance.

Character and appearance, including the area of high townscape value

26. The NP identifies the appeal site as within the South Cliff and Western Esplanade Area of High Townscape Value (AHTV), which comprises of a residential area that is strongly influenced by its proximity to the coastline, and views over the sea. The character and appearance of the area, including the AHTV, is derived from the relationship between the rows of large individualistically styled houses that front onto the roads of South Cliff Parade and Western Esplanade, and the openness of the predominantly closely mown grassed land between them and the cliff edge. This provides expansive elevated views across the meandering white cliff coastline, including the Dumpton Gap, and over the sea.
27. Although the appeal building is situated on land between the roads and the cliff top coastline, which is predominantly free of buildings, it is visually inconspicuous owing to its small scale, limited massing and plain appearance. As such, it does not detract from the general absence of buildings on this land, and it contributes positively to the special character of the area. Furthermore, from most public vantage points, the appeal building is seen against the backdrop of the nearby residential buildings that loom above it. As such, it is visually appreciated as part of the built-up area of the settlement.
28. The limited bulk and massing of the proposed hip-to-gable roof enlargement, which would be contained on the appeal building's existing footprint, would not harmfully intrude on the general openness of the land between the roads and the cliff, nor would it harmfully detract from important views and vistas identified in NP Policy BSP2. Although the proposed glazed gable would markedly change the appearance of the building's seaward facing elevation, it would not be visually incongruous in the context of the varied arrangement of roof forms in the locality. Due to its aspect, the proposed gabled elevation

would not be readily visible from nearby residential properties and thus would retain the building's plain and somewhat austere appearance on 3 sides, even accounting for the discreet rooflight. In views from the beach below, the appeal building, and the proposed alterations to it, would be largely obscured by the tall cliff.

29. In close distance views from the nearby footpath that leads to the beach, and in elevated views looking down from the roads, paths and open land to the north and south, the proposed roof enlargement and gabled elevation would be seen with and against the backdrop of the residential buildings fronting the nearby roads. A number of these dwellings have front projecting gables and large glazed windows. Seen in this context the proposal would not be incongruous or cause visual harm and the domestication of the building would be consistent with the area's residential character. Furthermore, the glazing would be subdivided by traditional timber framing, which is an appropriate material for the age of the building.
30. The brass standing seam detail to the gable is a traditional material. Its thin profile and colour finish would not appear strident and would be absorbed within the variety of colour finishes and materials found in the locality. The reinstatement of the plain tile roof covering would reflect the predominant roof coverings in the areas. Sympathetic materials would replace those used in the bricked-up windows.
31. Domestic paraphernalia would be likely to accumulate in the garden area of the proposed dwelling and potentially be visible above the boundary fencing. Given the scale of the proposal, large items of children's play equipment are unlikely, however washing lines, garden furniture, wheeled bins for refuse, recycling and garden waste, would be expected to be stored at the property and on the roadside for collection. Such paraphernalia would identify the change in use of the building, however it would be consistent with the appeal site's residential surroundings, and would not cause unacceptable visual harm.
32. For these reasons, I conclude on this issue that the appeal proposal would not harm the character and appearance of the area, with particular regard to its location within an AHTV. Consequently, it would be consistent with NP Policies BSP7 and BSP9, and TDCLP Policies QD02 and SP35, which together seek to ensure, amongst other requirements, that development will be supported only where the design, scale of development, separation between buildings, use of materials and landscaping are complementary to the special character of the area. The proposal would also be consistent with Framework Paragraph 135 insofar as it requires developments to be well designed and sympathetic to local character, including the surrounding built environment and landscape setting.

Living conditions of future occupiers

33. The proposed dwelling's internal floor space would not meet the Nationally Described Space Standards (NDSS) set out in TDCLP Policy QD04. However, the supporting text to the Policy states that it may be necessary to make an exception to meeting NDSS, where it would be detrimental to the character and integrity of a historic building. I have already found that the appeal building is a NDHA, and in this scenario the TDCLP requires the applicant to demonstrate the case for not meeting NDSS.

34. The appellant's evidence indicates that increasing the floor space within the dwelling to meet NDSS could be achieved through a significant enlargement of the building across part of its proposed garden. However, this would markedly increase its massing and erode the simplicity of the building's original form and character, to the detriment of its significance as a NDHA. Nonetheless, the proposal should provide adequate living conditions for future occupiers.
35. Despite the intrusion of the roof slopes into parts of the bedroom's headroom, the drawings indicate that it would have a practical almost square floor area. This layout would allow convenient movement to and from the bedroom, and circulation space around the bed and to the wardrobe, which would be positioned broadly centrally where the headroom is greatest.
36. The ground floor living area, where future occupiers would be reasonably expected to spend most of their time, would have an almost square shape and satisfactory ceiling height. As such, it would provide a practical and functional open plan room, with convenient access to and from the relatively generous garden area. Double height voids within the building and the full height glazing to the gable would give generous access to light to the internal rooms and would provide future occupiers with expansive views across the cliff and over the sea, giving a sense of space.
37. Consequently, future occupiers of the proposed dwelling would have a generous outlook and a strong connection with the attractive coastal landscape. This would counteract its modest internal space and the somewhat enclosing effect of the roof slopes within the bedroom. As such, the proposal would not provide unduly cramped or oppressive living conditions for the intended future occupiers.
38. Taking all the above into account, I conclude on this issue that the proposed dwelling would provide adequate living conditions for the intended future occupiers, consistent with Framework Paragraph 130.f) insofar as it requires development to provide a high standard of amenity for future occupiers. Departing from the quantitative NDSS would result in a conflict with that TDCLP Policies QD03 and QD04, however the proposal is a justified exception to NDSS for the reasons given above. For these reasons, the policy conflict has limited weight against the appeal proposal.

Land stability and coastal erosion

39. I have no authoritative evidence to demonstrate that the proposed dwelling would be exposed to any significant risk of coastal erosion and flooding over its lifespan, or that it would accelerate coastal erosion through surface water run-off, or restrict the capacity of the coastline to adjust to sea-level rise and climate change.
40. Cracks in the mortar courses of the appeal building's walls are attributed by the appellant to structural movement caused by the spread of the roof structure following the roof timbers being attacked by vermin. There is no contrary evidence that this was caused by cliff instability or coastal erosion.
41. Whilst the Council recommends a survey of the retaining wall, there is no substantive evidence from any party to demonstrate that the appeal proposal would be likely to place any significant additional structural loading on this wall or otherwise have any direct detrimental effects on its structural stability. The

evidence suggests vegetation growing between the wall and the appeal building, which appears unrelated to the proposal, is the primary justification for this.

42. Based on the evidence before me, I conclude on this issue that the appeal proposal would not adversely affect the stability of the land or coastal erosion and change, nor would it be adversely affected by those processes. As such, I find no conflict with TDCLP Policy CC03, or with Paragraphs 176-179 of the Framework on Coastal Change.

Other Matters

43. The proposal would not harm the character and appearance of the area, nor would it harmfully detract from the important views and vista identified in the NP. The living conditions of nearby occupiers would be safeguarded and no harm to highway safety would occur. However, an absence of harm does not carry positive weight in favour of the appeal proposal, and these would be requirements of any well-designed scheme.

Planning Balance

44. Through my AA, I have found that the proposal would have a significant adverse effect on the integrity of the SPA, in conflict with TDCLP Policy SP29, and would cause potential adverse impacts on protected bat species, contrary to Framework Paragraphs 180 and 186. I attach substantial weight to this harm and the resultant policy conflict.
45. The proposed alterations would result in a small degree of harm to the architectural significance of the appeal building as a NDHA, in conflict with TDCLP Policy SP36. Non-compliance with the NDSS, although justified in this instance, would result in a conflict with TDCLP Policies QD03 and QD04. However, this conflict is a matter of limited weight against the proposal as the alterations would contribute to providing adequate living conditions for future occupiers and they would help secure the reuse and long-term future of the NDHA.
46. The proposal provides an opportunity to better reveal the building's historic significance. Delivering a single housing unit would make a small but valuable contribution to housing supply. There would be short-term employment opportunities and economic activity through construction works, together with long-term economic and social benefits through the new resident household supporting businesses and services within the area. Environmental benefits from enhancing biodiversity at the appeal site, incorporating recycled or reclaimed materials, installing insulation exceeding the Building Regulations, and using energy efficiently to minimise carbon emissions would be relatively small.
47. These benefits weigh moderately in favour of the proposal and would be sufficient to outweigh the small degree of harm to the significance of the NDHA and the non-compliance with NDSS, and the resultant policy conflicts. However, they are insufficient to outweigh the substantial weight that I have given to the proposal's significant adverse effect on the SPA and on protected bat species. As such, the benefits are not sufficient to outweigh the collective conflict with TDCLP Policies SP29, SP36, QD03 and QD04, and the conflict with the development plan as a whole.

48. Under Footnote 7 to Framework Paragraph 11.d)i. the appeal proposal's adverse effect on the integrity of the SPA would provide a clear refusal reason. Therefore, even if the policies most important for determining the application were out of date, as the Council indicates, the proposal does not benefit from the Framework's presumption in favour of sustainable development.

Conclusion

49. For the reasons given, I conclude that the proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the benefits of the proposal and the provisions of the Framework, to indicate that a decision should be made other than in accordance with the development plan. Consequently, the appeal should be dismissed.

G Sylvester

INSPECTOR