



Appeal Decision

Site visit made on 22 May 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2024

Appeal Ref: APP/J2210/W/23/3323057

2-4 St John's Road, Whitstable CT5 2QT

- 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 Nigel Whitehouse against the decision of Canterbury City Council.
 - The application Ref is CA/22/02213.
 - The development proposed is the demolition of existing building and erection of one office and nine flats with associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and erection of one office and nine flats with associated parking at 2-4 St John's Road, Whitstable CT5 2QT in accordance with the terms of the application, Ref CA/22/02213, subject to the conditions in the attached schedule.

Preliminary Matter

2. I have taken the address from the Council's decision notice as it encompasses the full extent of the site.

Main Issues

3. The main issues are a) whether or not a sequential test is required to assess flood risk for the proposed development; and b) the effect of the proposed development on the integrity of the Thanet Coast and Sandwich Bay and Thames, Medway and Swale Estuaries Special Protection Areas (SPAs).

Reasons

Flood Risk

4. The appeal site is within Flood Zone 2 and so carries a potential risk of flooding. The Council considers that a sequential test should have been undertaken to demonstrate that there are no other sites available that could accommodate the development, and which have a lower probability of flooding. The failure to provide this information is said to render the proposal contrary to Policies CC4 and CC6 of the Canterbury District Local Plan 2017 (Local Plan).
5. For sites within Flood Zones 2 and 3, proposals are required by Policy CC4 to be accompanied by a Flood Risk Assessment (FRA) prepared in accordance with the Council's Drainage Impact Assessment guidance note and Strategic Flood Risk Assessment. A 'Flood Risk Assessment and Drainage Strategy' (September 2022) prepared by RMB Consultants (Civil Engineering) Ltd accompanied the

application. There is no substantive evidence before me to indicate that this document was not prepared in accordance with the requirements of Policy CC4. Furthermore, this policy does not specifically require a sequential test to be undertaken.

6. Policy CC6 relates to minor infill development and development of previously developed land (PDL) within Flood Zones 2 and 3. It requires adherence to other Local Plan policies and acknowledges that each case will be treated on its own merits having regard to the particular circumstances and risks. The appeal site is occupied by buildings and falls within the definition of PDL.
7. There is no specific requirement for a sequential test as part of Policy CC6. Indeed, the Council's approach in this regard is reinforced by Policy CC5, which does specifically require a sequential test for sites not previously developed and which lie within Flood Zones 2 and 3.
8. The information before me indicates that the Local Plan would have been subject to a Strategic Flood Risk Assessment, in accordance with the requirements of the National Planning Policy Framework (the Framework). Whilst the appeal site was not an allocation site, the then extant permission meant that it was included within the Local Plan's supply of housing sites and is within the Local Centre of Swalecliffe. These factors would appear to support the appellant's case that flood risk was considered at the plan preparation stage, and that a further sequential test is not necessary.
9. It seems to me that the wording of Policy CC6 would allow for the situation to be reappraised if, for example, circumstances or risks had materially changed since the Local Plan was adopted. However, there is no substantive evidence before me to indicate that, in the intervening period, any such changes have occurred in relation to this matter generally, or the appeal site in particular. Furthermore, the Environment Agency (EA) has not raised any concerns or an objection to the current proposal.
10. Having carefully considered all of the information before me, having regard to the specific circumstances of the site and in light of the advice in the Planning Policy Guidance, I conclude that a further sequential test in this specific instance is not required. The proposal represents an acceptable form of development and in respect of flood risk there is no conflict with Policies CC4 and CC6 of the Local Plan which, amongst other things, seek to protect areas at risk of flooding and ensure that suitable mitigation measures are installed. Compliance with these policies negates the need to undertake a sequential test as set out in the Framework.

Integrity of the SPAs

11. The site is within the zone of influence of the Thames, Medway and Swale Estuaries and Thanet Coast and Sandwich Bay SPAs. In combination with other development, the proposal has the potential to create recreational disturbance in those areas by increasing the resident population. There would therefore be a likely significant effect on the SPAs.
12. Policy SP6 of the Local Plan indicates that in such circumstances new developments would be expected to fund management and monitoring measures to mitigate these impacts. These mitigation strategies have been agreed with Natural England. A Unilateral Undertaking (UU) has been

submitted during the appeal process and makes provision for the necessary contributions. The Council has subsequently indicated that the UU is acceptable.

13. As such, I am satisfied that the scheme can be adequately mitigated and that the proposed development would not have an adverse effect on the integrity of the SPAs. Therefore, the proposal would accord with Policies SP1, SP6, LB5 and LB9 of the Local Plan which collectively, amongst other things, ensure the integrity of the habitats sites are protected and that adequate mitigation measures are secured to ensure no adverse effect upon their integrity.
14. It also accords with the Framework which seeks to avoid harm to biodiversity and ensure that adequate mitigation is provided before planning permission is granted.

Other Matters

15. The EA considers that the mitigation measures set out in the submitted FRA should be implemented. These measures largely relate to the use of internal materials/decoration and the provision and position of services. However, it importantly also sets out finished floor levels and is therefore a document that forms a fundamental part of the proposed development and planning permission. It is therefore included within the list of approved plans and documents.

Conditions

16. The Council has provided a list of suggested conditions to which the appellant has not raised any objections. I have considered these in the light of government guidance on the use of conditions in planning permissions and made amendments accordingly.
17. In addition to the standard time limit, a condition listing the approved plans and documents is necessary in the interests of certainty.
18. To ensure the development functions as intended, it is necessary before the buildings are occupied for the car and cycle parking to be provided, the noise mitigation measures to be installed and the site fully laid out.
19. In order to safeguard the living conditions of neighbouring occupiers, the first floor side windows in the northeast and southwest flank elevations along with the second floor side window will need to be obscurely glazed and non-opening up to 1.7m above the finished floor level.

Conclusion

20. For the reasons given above, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Stewart Glassar

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 and documents:
 - 1887/04-A - Proposed Plans
 - 1887/01-B - Existing Site Location Plan
 - 1887/05-A - Proposed Elevations
 - 1887/03-B - Proposed Site Plan
 - Flood Risk Assessment and Drainage Strategy - RMB Consultants (Civil Engineering) Ltd (September 2022)
 - Noise Impact Assessment - MRL Acoustics (October 2022)
- 3) The development hereby permitted shall not be occupied until the access, parking spaces, hard standing and turning area have all been provided in accordance with the approved plans. They shall thereafter be retained and shall not be used for any other purposes.
- 4) The development hereby permitted shall not be occupied until details of secure cycle parking facilities have been submitted to and approved by the Local Planning Authority. The approved cycle parking facilities shall be provided prior to the first occupation of the development and thereafter retained.
- 5) The development hereby permitted shall not be occupied until the noise mitigation measures set out within section 5.0 of the Noise Impact Assessment (October 2022) prepared by MRL Acoustics have been fully implemented. These measures shall be permanently retained as such thereafter.
- 6) The first floor windows hereby approved within both the northeast and southwest (side) elevations; and the second floor side window within the southwest flank elevation shall be non-opening up to 1.7m above the finished floor level of the room that they serve and shall be provided and maintained with obscured glass to a minimum level of obscurity to conform to Pilkington Glass level 3 or equivalent. The windows shall only be installed in accordance with this specification and shall be permanently retained as such thereafter.

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