
Appeal Decision

Site visit made on 14 May 2024

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/Z2260/W/23/3331787

Land to rear of 177 College Road, Margate CT9 2UL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr C Provan against the decision of Thanet District Council.
- The application Ref is F/TH/23/0898.
- The application sought planning permission for the erection of 3 No. 2-bed single storey dwellings with associated access and landscaping without complying with a condition attached to planning permission Ref F/TH/20/1508, dated 20 May 2021.
- The condition in dispute is No 16 which states that: "Prior to the first occupation of the development hereby approved, full details of both hard and soft landscape works, to include:
 - species, size and location of new trees, shrubs, hedges and grassed areas to be planted,
 - the treatment proposed for all hard surfaced areas beyond the limits of the highway,
 - walls, fences, other means of enclosure proposed,shall be submitted to, and approved in writing by, the Local Planning Authority. All hard and soft landscape works shall be carried out in accordance with the approved details prior to the first occupation. Any trees or plants which within a period of 5 years from the 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".
- The reason given for the condition is: "In the interests of the visual amenities of the area and to adequately integrate the development into the environment in accordance with Policies QD02, SP26, SP30 and GI04 of the Thanet Local Plan".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council notes that there are some parts of the landscaping scheme that they do not consider have been completed in line with the approved plans. I noted on site that three dwellings have been constructed, along with the access, rear gardens and some landscaping. The close boarded fences have been installed and some soft and hard landscaping carried out.
3. The Council are also concerned that the cycle and refuse storage has not been provided as shown on the approved plans and as required under conditions 14 and 15. My decision is necessarily based on the proposed drawings.

Background and Main Issues

4. Planning permission was granted for three single storey dwellings, access and landscaping¹. Condition 16 of that permission required the submission of a hard and soft landscaping scheme for the approval of the Council, and the scheme to subsequently be carried out in accordance with those approved details.
5. A landscaping scheme pursuant to Condition 16 was approved. This scheme contained post and rail fencing to the perimeter of the site with a hedge planted in front, trees to the rear gardens and planting to the front, along with a reptile receptor site to the southwest side of the site.
6. The appellant sought to vary Condition 16 to allow a revised landscape scheme which is the subject of this appeal. The proposed drawings show the deletion from the scheme of the post and rail fencing and hedges surrounding the rear gardens; they have been replaced with 1.8m high close board fencing. The post and rail fencing and hedging have been retained to the western boundary of the site adjacent to the access road. The scheme shown on the drawings would no longer include a wild cherry tree to the rear garden of plot 5. The reptile receptor area is shown as being retained.
7. In light of the above, the main issues are the effect of the proposed landscaping scheme on:
 - the character and appearance of the area; and,
 - ecology and biodiversity.

Reasons

Ecology and biodiversity

8. The site is within an area where there is the potential for various protected species to be present, notably newts, slow worms, bats, lizards and hedgehogs, as identified in an ecological assessment accompanying the original planning application. The Council argues that the extent of close boarded fencing shown in the appeal scheme does not allow sufficient permeability of the site to enable ease of movement over the landscape, particularly for the ground dwelling species identified.
9. As identified in their consultation response on the appeal scheme, Kent County Council Ecological Advice Service recommends the provision of 'hedgehog highways' through the fencing to enable sufficient connectivity between habitats. They also consider that the proposed hedges to the rear gardens should not be removed from the scheme as they would provide connectivity for the reptile population present in the receptor site. At the time of my site visit, the rear gardens contained lawns but not the hedgerow planting as shown on the approved scheme.
10. By way of mitigation, the appellant has agreed to a condition to require the provision of holes at ground level within the close boarded fencing to prevent the fragmentation of habitats and maintain permeability. The installation of a 'hedgehog highway' would provide some mitigation. However, given the County Council's ecological advice, the deletion of the hedgerows from the scheme would result in poor connectivity between habitats for the reptile population

¹ Ref F/TH/20/1508

present within the receptor site. Little substantive evidence to the contrary has been submitted with the appeal. The proposed landscaping scheme would consequently diminish the quality of habitats for local wildlife including protected species.

11. Paragraph 186(a) of the National Planning Policy Framework (the Framework) is clear that where significant harm to biodiversity from a development cannot be avoided or adequately mitigated then planning permission should be refused. The landscaping scheme as proposed would be a retrograde step compared to the approved scheme in terms of its effect on local ecology and biodiversity and would therefore conflict with the aims of Local Plan Policy SP30. Amongst other things, this policy requires development to make a positive contribution to the conservation, enhancement and management of biodiversity and geodiversity assets.

Character and appearance

12. The appeal site is located to the south of College Road and was developed as a backland site. To the west it borders an open field with a primary school beyond. To the south and east is a wooded area with some allotments and Dane Valley Woods further to the south. The houses and gardens of College Road lie immediately to the north. The Council identify the site as being within a Green Wedge as defined by the Local Plan.
13. Whilst I appreciate the Council's view that it would be undesirable for the boundary treatment to create a hard urban edge to the site, I do not consider that the 1.8m close boarded fence presents a boundary treatment that unacceptably harms the character and appearance of the area. The west boundary with the field retains the open post and rail fencing and as such maintains a sense of openness in views into and out of the site. The close boarded fencing installed around the perimeter of the gardens and along the east side of the site is consistent with a typical domestic boundary and reads as a continuation of the boundaries to rear gardens along College Road. The significant tree coverage to the south and south-east offers screening from longer views from Dane Valley Road and the footpaths leading off it.
14. The gardens to the three dwellings are modestly sized. Two trees to the rear of plot 5 are shown on the approved landscaping plan and comprise a wild cherry and a hawthorn. Given these trees, when mature, are both potentially large trees with a significant spread within a small garden, shown as being planted within a few metres of the house, the removal of the cherry would ultimately allow more space for the hawthorn and other planting within the garden by the occupiers. The removal of one tree from the approved scheme would not be harmful to the character and appearance of the area.
15. The alterations to the landscaping scheme are in line with the overall aims of Policies QD2, SP25 and SP26 of the Local Plan. Taken together, these policies seek to promote or reinforce the local character of the area, conserve and enhance Thanet's local distinctiveness, along with aiming for development within the Green Wedges to retain the individual character and distinctiveness of towns.

Other Matters

16. I note the original planning permission reference F/TH/20/1508 refers to contributions pursuant to a unilateral undertaking. Had I been otherwise minded to allow the appeal, I would have sought the views of both parties on the implications of granting a new planning permission without any such undertaking. However, since the appeal is dismissed in any event, I have not considered the matter further.

Planning Balance and Conclusion

17. I have found that the proposal would be acceptable in terms of its effect on the character and appearance of the area. However, this would be outweighed by the harm I have identified to ecology and biodiversity.
18. As such the proposal would be contrary to the development plan read as a whole. No material considerations have been shown to have sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal should therefore be dismissed.

L Francis

INSPECTOR