

Appeal Decision

Site visit made on 9 September 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2024

Appeal Ref: APP/J2210/W/23/3335641

Land adjoining 256 Canterbury Road, Herne Bay CT6 7HB

- 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 A Leggatt of Coastal Developments Ltd against the decision of Canterbury City Council.
 - The application Ref is CA/23/00879.
 - The development proposed is the erection of two detached dwellings together with associated parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted a plan (reference P03) indicating the visibility splays at the access to the site. I am mindful of the advice in the Planning Inspectorate's 'Procedural Guidance: Planning Appeals England', which makes clear that the appeal process should not be used to evolve a scheme, and that what is considered by the Inspector at the appeal stage should essentially be the same scheme as the proposal that was considered by the Council and interested parties at the application stage.
3. Nevertheless, I consider that the proposal before me, is essentially the same as the scheme that was considered by the Council and therefore that the appeal process is not being used to evolve the scheme. Furthermore, the Council has had the opportunity to comment on the additional plan. As such, I am satisfied that the evidence does not alter the proposed development to an extent that anyone involved in the appeal would be prejudiced or impacted should I accept the plan.
4. A Unilateral Undertaking dated 3 July 2024 has been submitted during the appeal process. This would secure a financial contribution to mitigate the effect of the development on the Thanet Coast and Sandwich Bay Special Protection Area (SPA). The Council considers the legal agreement addresses its third reason for refusal and has advised that that reason for refusal is no longer contested. The appeal will be determined on this basis, and I shall return to the legal agreement later in my decision.

Main Issues

5. The main issues are the effect of the proposed development on:

- highway safety, with regard to the safety of highway users;
- the character and appearance of the area; and
- the integrity of the SPA.

Reasons

Highway safety

6. The site would be accessed from Canterbury Road (the A299), which is subject to a 30 miles per hour speed limit. The site is close to a roundabout forming part of the Eddington Interchange. The access would cross a pedestrian footway and would lead past No 258 to the proposed dwellings.
7. There is no dispute that, based on the 30mph speed limit, the access requires a visibility splay of 2.4 metres x 43 metres in both directions. The amended plan indicates that the required visibility to the nearside kerb line can be achieved in one direction. However, the visibility splay in the direction of the Eddington Interchange roundabout does not meet the required dimensions. A visibility splay to the centreline of the A299 has been shown. However, given the proximity of the site to the busy roundabout, I cannot be certain that the reduced stopping sight distance between vehicles emerging from the site access and those exiting the Eddington Interchange roundabout, would not increase the risk of collisions. Accordingly, it has not been adequately demonstrated that suitable visibility can be achieved to facilitate safe egress from the site.
8. There is no substantive evidence before me to demonstrate that emergency vehicles could enter, manoeuvre and exit the site in a forward gear. The consultation response from Kent Fire and Rescue Service indicates that this is required under the Building Regulations 2010 and that suitable arrangements to achieve compliance can include the installation of a hydrant or using a sprinkler or misting system within the dwellings. Accordingly, any requirements for access under the Building Regulations are a matter for control under that regime, rather than the planning system.
9. I conclude that the proposal would adversely affect the safety of highway users. The development therefore conflicts with Policy DBE3 of the LP, which requires proposals to have regard to the safe movement of pedestrians, cyclists and cars within and around the proposed development and that it should not have a detrimental effect on the highway network in terms of road safety and the Framework, which requires that safe and suitable access can be achieved for all users.

Character and appearance

10. The appeal site is to the rear of dwellings fronting Canterbury Road. Development on this side of Canterbury Road primarily consists of single-storey dwellings set back from the road in a linear form. To the rear of these dwellings, a large mixed use development known as Strode Park, including two-storey detached and semi-detached dwellings is under construction.

11. The proposal is for two detached dwellings to the rear of No 256 and No 258 Canterbury Road (Nos 256 and 258). Due to their position, the proposal would not relate well to the linear pattern of development in Canterbury Road. However, the form and character of the area is undergoing considerable change through the construction of the Strode Farm development. The dwellings constructed on the adjoining land relate to the new roads within that development. However, they have altered the character of the area to the rear of the dwellings fronting Canterbury Road. Consequently, although the proposed dwellings would not front Canterbury Road, they would not appear as backland development given the context of the Strode Farm site.
12. The development would sit at a lower level than Nos 256 and 258, and the dwellings would be largely screened in views from Canterbury Road by the existing dwellings and the change in land levels. Moreover, the substantial changes to the rear of the frontage development have altered the context of the site. Accordingly, the glimpsed views of the proposed dwellings would not harm the character and appearance of the area.
13. I conclude that the proposal would not harm the character and appearance of the area. The development therefore accords with Policy DBE3 of the Canterbury District Local Plan 2017 (LP) and the National Planning Policy Framework (the Framework), which collectively require proposals to have regard to the character, setting and context of the site and to be sympathetic to local character, including the surrounding built environment.

Integrity of the SPA

14. The appeal site lies within the zone of influence of the Thanet Coast and Sandwich Bay SPA, which is internationally important for its over-wintering turnstones. The Conservation of Habitats and Species Regulations 2017 requires me as the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposal, either alone or in combination with other plans or projects, on the integrity of the sites.
15. It has been established that residential development within the zone of influence would likely result in harm to the protected area through additional recreational disturbance. The proposal would create a net gain of dwellings and in combination with other developments permitted in the area there would be a likely significant effect on the integrity of the SPA. In these circumstances, Policy SP6 of the LP explains that new developments should fund management and monitoring measures to mitigate the impacts.
16. The Planning Practice Guidance on *Appropriate Assessment* indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice. The appellant has submitted a signed UU, under Section 106 of the Town and Country Planning Act 1990 that would ensure a payment towards the mitigation strategy that is acceptable to the Council. Therefore, taking into consideration the submitted UU which would mitigate the proposed development, and the absence of an objection from Natural England, I conclude that the proposal would not have an adverse effect on the integrity of the SPA.

17. In this way harmful effects would be prevented. As a result, following an appropriate assessment, the proposals would not adversely affect the integrity of the SPA. There would therefore be no conflict with Policies SP1, SP6 and LB5 of the LP which protect sites of international conservation importance.

Planning Balance

18. The Framework does not change the statutory status of the development plan as the starting point for decision making. Whilst I have found that there would be no harm to the character and appearance of the area, nor to the SPA, the proposal is not in accordance with the aforementioned policies of the LP due to the unacceptable effect on highway safety. The proposal conflicts with the development plan as a whole and should be refused unless other material considerations indicate otherwise.
19. The appellant suggests that the Council is unable to demonstrate a five year supply of deliverable housing sites. However, the Council states that it is only required to demonstrate a four year supply of deliverable housing sites, in accordance with Paragraph 226 of the Framework. Even if I were to accept that the Council is unable to demonstrate a five year supply of deliverable housing sites, Paragraph 11 d) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
20. The proposal would make a positive contribution to housing supply and delivery and would not harm the character and appearance of the area whilst prevent harmful effects on the integrity of the SPA. In addition, there would be associated social and economic benefits during the period of construction and once the dwellings are occupied. However, the contribution of two additional dwellings to meeting housing need in the Council area through a more efficient use of land in an urban area and the associated benefits are nevertheless limited by the scale of development proposed and would not outweigh the harm identified in respect of the safety of highway users.
21. In the particular circumstances of this case, I have concluded that the proposal would have an unacceptable effect on highway safety and would conflict with the relevant policies of the development plan and the Framework. The adverse impacts would therefore significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

Conclusion

22. The proposal conflicts with the development plan. Material considerations do not indicate that a decision should be made other than in accordance with the development plan. For the reasons given above the appeal should be dismissed.

J Pearce

INSPECTOR