



Appeal Decision

Site visit made on 16 October 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 November 2024

Appeal Ref: APP/V2255/W/24/3337851

Land to the southeast of Beauvoir Drive and north of Newman Drive, Sittingbourne, Kent ME10 2TQ (Easting: 591278, Northing: 165814)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Birring against the decision of Swale Borough Council.
 - The application Ref is 23/502123/FULL.
 - The development proposed is the erection of a 3 two-storey dwellinghouses and subsequent landscaping, parking and garden space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on a) the character and appearance of the area, having particular regard to the existing public open space; b) flood risk; and c) Habitats sites.

Reasons

Character and Appearance

3. The appeal site is an open area of grassed land which forms part of a wider area of open space situated between Beauvoir Drive and Newman Drive. As a whole, it clearly acts as a practical and visual buffer forming an important, established component to the wider setting of the houses in the area, and to the lake adjacent to Newman Drive.
4. Indeed, it was evident from my site visit that housing in the area has been positioned, as best as possible, so that it fronts onto areas of open space, such as the appeal site and the nearby lake, rather than turning its back on them. This is a distinctive element in the character and appearance of the area and contributes positively towards creating a sense of place.
5. With regard to the loss of the open space, the appellant draws my attention to the wording in the Local Plan as to how open space is defined. It seems to me that the wording on which the appellant relies is a reference to areas of water. Furthermore, I disagree that the use of the word 'and' means that there is a requirement for both sporting/recreational opportunities and visual amenity to have to apply to a site before it can be considered as open space of value to the public. To my mind, the appellant's approach leads to a narrow and unrealistic interpretation of the definition and is one with which I disagree.

6. I see no reason why having undeveloped areas of green space adjacent to where people live cannot contribute to an overall sense of wellbeing, regardless of their use for other purposes. Being able to live and access an environment that has an element of tranquillity or openness such that it is a pleasant place to be, would clearly have benefits for many people. It seems to me that if such areas were not generally regarded as having beneficial effects on the living conditions of residents they would not be provided in and around housing estates such as this one.
7. In quantitative terms the amount of existing open space to be lost is small and other areas of open space would be retained. Nevertheless, the appeal site makes a practical, qualitative contribution to the environment in which it is located as well as to the living conditions of nearby residents. The retention of other areas of open space would not overcome this harm.
8. Notwithstanding the loss of the open space, the proposal would result in three houses positioned so that their rear elevations and gardens would face towards the adjacent open space. Their plots would extend noticeably into the open space and despite the nearby single storey garage, would very obviously appear as additional dwellings at odds with the established layout. They would be prominent features within the street scene that would appear out of keeping with the prevailing pattern and character of development.
9. The Council acknowledges that short terraces of houses are found locally and it has not objected to the design of the dwellings per say. Nonetheless, neither this, nor the provision of the suggested landscaping nor the topography of the adjacent land would overcome the very obvious harm that would arise.
10. I find that the proposal would result in the loss of beneficial public open space and would not integrate well into the receiving environment, thereby causing harm to the character and appearance of the area. This would be contrary to Policies ST1, CP4, CP5, DM14, and DM17 of the Swale Local Plan 2017 (SLP) which, amongst other things, seek to ensure that developments safeguard existing open space, reflect the positive characteristics of an area and strengthen local distinctiveness and a sense of place.

Flood Risk

11. For development proposals in areas known to be at risk from flooding, the National Planning Policy Framework (the Framework) requires the application of the sequential test. The aim of the test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. Only if it is not possible for development to be located in lower flood risk areas should development be considered, subject to the exception test.
12. The submitted sequential test considered only sites that can accommodate between 2-4 units; factored into the assessment that it would not be viable for the applicant to purchase multiple smaller sites; and that it would not be viable for the applicant to develop a site for larger dwellings or more dwellings, thus, these sites would not be developable or deliverable in relation to this specific applicant and this case. Also excluded from the test were sites with extant planning permission that were for a single dwelling or 10 dwellings as they were not comparable with the proposal.

13. In the Planning Policy Guidance (PPG), reasonably available sites are defined as those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. The PPG says that these could include a series of smaller sites and/or part of a larger site if these could accommodate the proposed development.
14. In this case, the proposed dwellings are individual dwellings. There is nothing to suggest that they could not in reality be delivered separately. On this basis, I therefore find that the appellant's approach of only searching for sites that could accommodate 2-4 dwellings, as opposed to delivering the proposal over three separate sites, potentially excludes sequentially better locations where the proposed development could be delivered. A series of separate small residential sites could still provide suitable alternative land for equivalent development at a lower risk of flooding.
15. Consideration of larger sites appears to have been discounted primarily on the basis that the appellant would only wish to purchase part of a larger site and thus it would not be financially viable to pursue this option. However, the PPG states that reasonably available sites could include part of a larger site if it would be capable of accommodating the proposed development, not whether an individual applicant has the finances to purchase the site.
16. Furthermore, discounting sites unaffordable to the appellant does not necessarily mean that these sites would be unavailable at a fair market price. Such sites could still have the effect of providing residential dwellings where there is a lower risk of flooding than the appeal site and therefore achieve the purpose of the sequential test.
17. The appellant's appeal submissions also refer to an alternative site with a lower risk of flooding which may be available, but this is yet to be ascertained. Therefore, given all of the above, the available evidence does not robustly demonstrate that there are no sequentially preferable sites available at a lower risk of flooding.
18. Therefore, I find that the proposed development would be contrary to Policy DM21 of the SLP insofar as it requires development to accord with the Framework and PPG and avoid areas that are at risk of flooding.

Habitats Sites

19. The appeal site falls within the zone of influence of the Swale Special Protection Area, the Medway Estuary and Marshes Special Protection Area and the Outer Thames Estuary Special Protection Area (SPAs). In brief, these sites are designated in order to safeguard habitats and the ecology they support. They can be disturbed by recreational activities arising from residents of new housing development within the zone of influence. Either on its own or in combination with other projects, the proposal could therefore have a significant effect upon these protected sites.
20. It appears that the impact on the SPAs could be monitored and managed to a satisfactory level through a tariff-based system that would fund mitigation measures. The appellant confirms that they are happy to pay the appropriate fee and will enter into the necessary legal agreement.

21. However, as there is currently no planning obligation or other mechanism submitted to secure that contribution, I cannot be certain that the mitigation measures would be forthcoming or implemented in an effective and timely manner. Without the necessary evidence of mitigation at the decision stage, the Conservation of Habitats and Species Regulations 2017 prevents me from granting permission for the development.
22. I therefore find that the proposal would not accord with Policies ST1, DM14, and DM28 of the SLP, which seek to protect the natural environment and in particular that sites of international nature conservation importance must receive the highest levels of protection. Nor would it comply with the Framework which requires that significant harm to biodiversity is avoided.

Other Matters

23. It is suggested that planting and landscaping would provide a biodiversity net gain. Despite a lack of detail, even if I agreed and imposed appropriate conditions, the weight that I could attach to such benefits would be limited.
24. I was directed to an appeal decision for the development of a new bungalow on an area of open space elsewhere in the borough. Aside from having been presented with only limited information, the scale of development and so the considerations involved would not be comparable to the current appeal.
25. It is suggested that the remaining, undeveloped open space could be assigned to the Council. However, there is no legal agreement in place, and I cannot be sure that it would be fairly and reasonably related in scale and kind to the development. As such, it is not a matter which carries weight in my decision.
26. There were pre-application discussions and subsequent amendments to the scheme. However, the Council did not support the principle of the development and the amendments did not overcome this objection. Moreover, this does not affect my consideration of the planning merits of the case.

Conclusion

27. The site is located within the existing settlement and within walking distance of some limited facilities. Redeveloping sites in such locations accords with the general thrust of the Framework's objectives for boosting the supply of housing. More generally, the appellant raises concerns regarding the supply of housing in the borough. Whilst these are all matters which could weigh in favour of the scheme, the proposal would adversely affect the integrity of the SPAs, and this provides a clear reason for refusal. Therefore, the presumption in favour of sustainable development does not apply and the balancing exercise set out in Paragraph 11 d) ii) is not engaged.
28. I have found that the proposed development would conflict with the development plan taken as a whole. There are no material considerations that indicate that a decision should be made other than in accordance with the development plan. For this reason, and having regard to the other matters raised, I conclude that the appeal should be dismissed.

Stewart Glassar
INSPECTOR