



Appeal Decision

Site visit made on 3 January 2025

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Appeal Ref: APP/Z2260/W/24/3342693

162 Botany Road, Broadstairs, Kent CT10 3SE

- 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 Angela Hogben against the decision of Thanet District Council.
 - The application Ref is F/TH/23/1408.
 - The development is the change of use of outbuilding from annex accommodation to a holiday let accommodation.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have removed “retrospective” from the description of development in the banner heading above as it is not an act of development under the Town and Country Planning Act 1990.
3. Although the Government published a revised National Planning Policy Framework (“the Framework”) in December 2024, the policies relevant to the substance of this appeal are not materially different. Therefore, I have not deemed it necessary to seek the parties’ views on the revised document.

Main Issues

4. The main issues in this appeal are:
 - Whether the development affects the integrity of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar site, which is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017, as amended (“the Regulations”).
 - Whether occupants of the development are provided with satisfactory living conditions, with particular regard to internal floor space, outlook and privacy.
 - The effect of the development on the living conditions of the occupiers of Numbers 162 and 164 Botany Road, with particular regard to privacy, noise and disturbance.

Reasons

The integrity of the SPA

5. The Council’s Strategic Access Management and Monitoring Plan (SAMMP) indicates that the SPA is used by large numbers of migratory birds. The particular species for which it is designated are populations of over-wintering Turnstones and

Golden Plover of European importance. The nature conservation objectives of the SPA are to maintain or restore its natural habitats and species at favourable conservation status.

6. The main threat to the integrity of the SPA is the disturbance of those qualifying bird species by recreational activities, particularly the use of the beaches. New housing development is likely to increase the number of residents using the coastline for recreation. In turn, this is likely to increase the negative effects of recreational disturbance to the birds, leading to declining populations.
7. The evidence indicates that the appeal property has been used as a holiday let for some time. Compared to the previous use of the holiday let building as ancillary annexe accommodation to Number 162 Botany Road (Number 162), its occupation by holidaying guests who are expected to explore the area for recreational purposes, particularly the nearby beaches, is likely to contribute to the disturbance of overwintering birds. Consequently, occupation of the holiday let 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. It is my duty as the Competent Authority under the Regulations to undertake an Appropriate Assessment (AA) to determine whether I have certainty that the appeal development's likely significant adverse effect on the integrity of the SPA can be avoided or mitigated.
9. Policy SP29 of the Thanet District Council Local Plan, Adopted July 2020 ("the TDCLP"), requires new residential development to comply with the SAMMP and mitigate its recreational pressure on the SPA. This requires development to contribute to funding the delivery of the SAMMP mitigation package through the payment of a tariff based contribution. Natural England has confirmed that the development's likely significant adverse effect on the integrity of the SPA can be mitigated through payment of this contribution.
10. The appellant has submitted a signed Unilateral Undertaking (UU) obligating payment of the mitigation contribution prior to the commencement of the development. However, as the evidence confirms that commencement of the development has already occurred there is no legal certainty that the UU would be effective in triggering payment of the mitigation contribution. Furthermore, the UU does not include the required annexed plan showing the land to which it relates, nor has the appellant provided up-to-date evidence of title to the appeal land.
11. There are no exceptional circumstances in the context of the Planning Practice Guidance¹ that would justify securing a revised UU planning obligation by planning condition. There are no very exceptional circumstances before me that would, under the appeals procedural guide², justify delaying a decision until a revised UU was submitted.
12. For these reasons, the submitted UU is deficient and it would not be effective in mitigating the development's likely significant adverse effect on the integrity of the SPA. Consequently, I conclude through my AA that the appeal development adversely affects the integrity of the SPA, contrary to TDCLP Policy SP29, the requirements of which are set out above.

¹ Paragraph: 010 Reference ID: 21a-010-20190723

² Paragraph 18.2.1 of the Procedural Guide: Planning appeals – England

Living conditions of the occupants of the holiday let

13. The appeal site consists of a chalet bungalow (Number 162) and the detached holiday let building to its rear. A small part of the holiday let building appeared to be in use for storage. The remainder was furnished with bunk beds, a table and a sofa in the open plan living area, together with a galley style fitted kitchen, a separate shower room and a spacious bedroom with double bed.
14. The evidence suggests that the holiday let is aimed at families with children and is likely to be booked for occupation by a single holidaying family, mostly for relatively short stays. The bunk beds in the open plan living area appear to be suited to this level of occupation and there is limited substantive evidence that the holiday let is aimed at groups of 6 persons, or that it is attractive to such large groups.
15. The evidence indicates that the internal floor area of the holiday let falls short of the Nationally Described Space Standards (NDSS) that apply to a 2 bedroom, 4 person dwellinghouse. However, it is reasonable to suppose that those occupying the holiday let would not require or expect the same level of provision of living space as those living all the time in a 2 bedroom, 4 person dwelling. The Inspector reached a similar finding in respect of an appeal³ to use a property in Cliftonville as a holiday let.
16. Based on likely occupancy levels and given the nature of the holiday let use, I find that the internal layout and floor space within the building provides modest but nonetheless sufficient living space for holidaying guests. It allows for comfortable use of its cooking facilities, dining area and shower room by occupiers during their stay, and adequate circulation space through the building. The double bedroom is relatively generous in size with sufficient space to store the paraphernalia associated with holidaying guests, particularly families. The development's departure from the NDSS, as allowed for in certain circumstances by the supporting text to TDCLP Policy QD03, is therefore justified in this instance.
17. The open plan living area containing the bunk beds, dining table and sofa is served by a pair of clear glazed doors and a wide clear glazed window. This window is opposite the sofa, and it provides occupiers with a relatively wide field of vision across the host property's garden.
18. The timber fence limits viewing distances from out the glazed doors serving the part of the building near to the bunk beds and dining table. However, this fence is not so close to the doors as to be visually oppressive or overbearing in those views. The height of the fence allows views over it of the upper parts of nearby buildings and the tops of trees, giving occupiers a sense of the outdoor environment. Taken together, the window and doors provide occupiers of the holiday let with a satisfactory outlook from the open plan living area.
19. There is a degree of mutual overlooking between the holiday let and Number 162, and the access gate provides an opportunity for the respective occupants to move between them. However, it is reasonable to suppose that occupiers of the holiday let would not require or expect the same living conditions as those occupying it all the time. Furthermore, as the appellant owns the host dwelling at Number 162 and

³ APP/Z2260/W/22/3297637

the holiday let, and manages it, it is reasonable to suppose that they will be considerate to the privacy of the holidaying occupiers.

20. The modest outdoor amenity space accommodates a picnic bench style outdoor dining facility, and it provides sufficient space for occupiers of the holiday let to relax, store paraphernalia such as bicycles and to dry clothes. Subject to conditions restricting the occupation of the appeal development to a holiday let, such as those imposed in the Peak District and Margate⁴ appeals, I conclude on this issue that the appeal development provides satisfactory living conditions for holidaying occupants, with particular regard to internal floor space, outlook and privacy.
21. Consequently, the appeal development is consistent with TDCLP Policies QD03 and E08 insofar as they require self-catering tourist accommodation to be appropriate to its surroundings, with sufficient usable space to facilitate comfortable living conditions, and not to lead to unacceptable living conditions through overlooking or a sense of enclosure. The development is also consistent with Framework paragraphs 124 and 135, insofar as they require development to ensure that occupiers have safe and healthy living conditions, and a high standard of amenity.

Living conditions of the occupiers of Numbers 162 and 164 Botany Road

22. Based on the evidence before me, the pattern of usage of the holiday let is different to its previous use as ancillary annexe accommodation to the appellant's dwelling at Number 162. Nonetheless, even if available for occupation by holidaying guests all year round, it is a relatively small property and likely to be subject to a commensurately low level of occupation at any one time.
23. The holiday let is accessed along a narrow path between the opposing flank walls of Numbers 162 and 164. Facing this path is a single high level clear glazed window in the flank wall of Number 164, and several windows in the flank wall of Number 162. The number of pedestrians using this path to access the holiday let, and the frequency of those pedestrian movements, whether during the daytime or at night, are likely to be very low given its scale and level of occupancy.
24. Whilst not occupied at the time of my visit, the activities expected to be carried out within the outdoor amenity space by occupants of the holiday let, including outdoor sitting and dining, the parking of cycles, and possibly the drying of washing, would be little different to those carried out in nearby gardens.
25. I have taken account of the relatively low levels of background noise at the time of my site visit. Nonetheless, given the modest size of the holiday let, I find that the intensity of the activities associated with its occupation, including the comings and goings along the access path, would not cause harmful levels of noise and disturbance either during the daytime or at night. As such, the holiday use is not detrimental to the living conditions of the occupiers of Numbers 162 and 164.
26. Views out of the holiday let and across the garden to Number 162 would not result in a harmful loss of privacy for the occupiers. As the appellant owns and manages the holiday let and Number 162, they have control over its occupation and the

⁴ APP/M9496/C/16/3151187 and APP/Z2260/W/18/3212394.

relationship between them. This could be maintained by a suitably worded condition such as that imposed by the Inspector in the Peak District appeal.

27. For these reasons, I conclude on this issue that the development does not have a harmful effect on the living conditions of the occupiers of Numbers 162 and 164 Botany Road, with particular regard to privacy, noise and disturbance. As such, it is consistent with TDCLP Policy QD03, insofar as it requires all development to not lead to unacceptable living conditions through overlooking and noise, amongst others. It also accords with the Framework Paragraph 135 insofar as it requires development to provide a high standard of amenity for existing users.

Other Matters

28. Car parking provision, flooding, safety or the appearance of the development were not part of the Council's reasons for refusing planning permission. Nonetheless, an absence of harm in these respects does not weigh in favour or against the appeal development.

Conclusion

29. Satisfactory living conditions are provided for occupants of the holiday let, and its occupation does not harm the living conditions of nearby occupiers. However, the submitted UU is deficient and would not be effective in securing the delivery of the SAMMP mitigation package.
30. Consequently, the unmitigated occupation of the development would have a significant adverse effect on the integrity of the SPA. This is a determinative matter irrespective of the development's benefits in providing tourist accommodation or the absence of other planning harms. In this scenario, I am directed by Regulation 63(5) to refuse planning permission.
31. The conflict with TDCLP Policy SP29 brings the development into conflict with the development plan when read as a whole. There are no material considerations, including the development's benefits, which outweigh this finding. Therefore, I conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR