



Appeal Decision

Hearing held on 11 December 2024

Site visit made on 11 December 2024

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 March 2025

Appeal Ref: APP/J2210/W/24/3351458

Land adjacent to Old Thanet Way, Whitstable CT5 3EH

- 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 Ryan Nicholls of Aspire LPP against the decision of Canterbury City Council.
 - The application Ref is CA/23/02115.
 - The development proposed is the erection of a care home (Use Class C2), as well as the formation of a new access, parking, landscaping and open space. All matters in detail except landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a care home (Use Class C2), as well as the formation of a new access, parking, landscaping and open space with all matters in detail except landscaping at Land adjacent to Old Thanet Way, Whitstable CT5 3EH in accordance with the terms of the application Ref CA/23/02115 subject to the conditions in the attached schedule.

Applications for costs

2. At the hearing an oral application for costs was made by the appellant against the Council. The Council responded orally to the costs application, in which they made a counterclaim for a partial award of costs against the appellant. These claims are the subject of a separate decision.

Preliminary Matters

3. A new National Planning Policy Framework (the Framework) was published on 12 December 2024, after the submission of the appeal. This newly published Framework replaces the previous version. The appellant and Council have had the opportunity to comment on this updated policy context. I have taken the comments of both parties into consideration in making my decision.
4. During the appeal process, the Council withdrew reasons for refusal 2, 3 and 4. I have no reason to come to an alternative conclusion on these matters, which will not form main issues.
5. The site address is described in evidence as being adjacent to Old Thanet Way. However, the OS location plan annotates this road simply as Thanet Way. It was clarified at the hearing that the road is widely referenced as Old Thanet Way, to differentiate it from a newer section of road of the same name. As the parties agree on this point, I shall continue to refer to Old Thanet Way throughout this decision. The site, in any case, is clearly indicated on the submitted site location plan.

Main Issue

6. The main issue is the effect of the proposed development on existing protected open space, including character and appearance.

Reasons

Protected open space

7. The appeal site comprises a strip of open land to the west of Old Thanet Way, within the built up area of Whitstable. The appeal site is inaccessible to the public and is separated from Old Thanet Way by mature landscaping. As a result, the site is only readily visible through gaps in that landscaping and from the footbridge which passes over Old Thanet Way. The appeal site is designated in the Canterbury Local Plan as Protected Open Space (POS), and forms part of *Site 146: All Saints Church and Surrounding Land*. This designation is formed of a 13ha area which includes both the appeal site and adjoining land.
8. Policy OS9 of the Canterbury District Local Plan (LP, 2017) concerns the protection of existing open space. The preamble to LP Policy OS9 sets out that there is a district-wide deficiency in open space, meaning that all POS within the urban boundaries (in this case, Whitstable) should be preserved. It sets out that proposals which would result in the loss of POS will be permitted if they meet certain criteria. This includes that a) there would be no material harm to the contribution the open space makes to the visual or recreational amenity of the area; and b) the open space has been assessed by the Council as making no positive contribution to its overall strategy for open space.
9. LP Policy DBE3 has also been referenced by the Council in its reason for refusal. This policy relates to principles of design and, in summary, sets out that proposals for development should be of a high quality design having regard to the character, setting and context of a site, the conservation of natural features and the visual impact on local townscape.

Assessment against LP Policy OS9

Criteria a) and b)

10. The proposed development would undoubtedly result in the loss of POS. While it is agreed between the Council and appellant that the POS does not contribute to any recreational amenity because the site is inaccessible by members of the public, with which I concur, the policy also requires an assessment of its contribution to the visual amenity of the area.
11. I note the description of the site within the submitted Landscape and Visual Appeal Statement, which sets out that the site forms a fairly featureless strip of poor quality grassed paddock and scrubland, surrounded by urban development. Nevertheless, it would be disingenuous to conclude that the existing site does not contribute, somewhat, to providing a visual and physical break in built form between the development on the east side of Old Thanet Way and residential development to the west of the site, including along Millstrood Road and Clifford Road.
12. The proposed development would result in the loss of the existing physically open space. This currently provides a clear sense of openness and spaciousness in the locality and is evidently cherished by local residents. This perspective on 'openness' is consistent with the findings of the Inspector for a previous scheme, across a wider site. Ultimately, the proposed development would harm the contribution the existing POS makes to the visual amenity of the area.

13. There is no evidence before me that demonstrates that the open space has been assessed by the Council as making no positive contribution to its overall strategy on open space. On the contrary, the preamble to the policy specifically refers to the land adjacent to Thanet Way as having positive amenity value for local residents and acts as a buffer alongside the road. As set out above, I agree with this position. Moreover, from the evidence before me, there are no significant changes to this approach in the emerging local plan, or anywhere else. From that perspective, the proposed development would be contrary to the provisions of both criteria a) and b) of LP Policy OS9, which are designed to be considered in tandem.
14. Both the Council's officer report and the submitted Statement of Common Ground make clear that all criteria under LP Policy OS9 should be considered, meaning that even where harm has been identified under criteria a) and b) it is necessary to move onto the exceptions under criteria c) and d). If one is satisfied, the loss of open space will be permitted. I assess these below.

Criterion c)

15. Criterion c) of LP Policy OS9 is applied where material harm is identified. This should be weighed against the demonstrable need for the development. I have identified that the loss of the existing open space would amount to some harm.
16. The appellant has set out a compelling case in respect of registered care accommodation need in both the entire district and the more immediate locality. A Care Home Need Assessment has been submitted, produced by Healthcare Property Consultants (HPC).
17. This document sets out a district-wide need, at the time of the assessment, of 274 en-suite bedrooms. This is broken down as 151 in the locality. In both cases, this is set to increase this year with an aging population. It is noteworthy that the district has a population of over 85s that is 19% above the national average, and increasing. The appellant's consultant from HPC confirmed at the hearing that, in his view, the need for older people's accommodation in the district is critical.
18. From the evidence before me, current facilities are clearly not sufficient to deal with the need now, and arising, in this housing category. Moreover, I note that a proportion of the existing care homes within the district are not purpose-built accommodation.
19. The Council argues that a good level of care accommodation is being provided and, in the pipeline, as acknowledged in HPC's assessment. The Council also sets out that from 2020/21 to 2023/24 there have been 167 bedspace completions, with extant planning permission for a further 245 spaces. I accept that there is evidence of positive planning activity providing consent for this type of accommodation. However, it is reasonable to conclude that there is no certainty that all, or any, of these schemes will be implemented. Moreover, those that are implemented would, in part, replace bedrooms that have already been lost in recent years.
20. Overall, the district is in a gloomy position in respect of registered care provision. From the evidence before me, this is set to continue, with only limited provision completed or in the pipeline. Accordingly, I am satisfied that demonstrable need for the proposed development has been adequately provided, and that this outweighs the harm that arises from the loss of the existing open space. The proposed development would therefore be in accordance with the relevant provisions of criterion c) of LP Policy OS9.

Criterion d)

21. Criterion d) of LP Policy OS9 sets out that a loss of POS can be accepted where no alternative sites are available and any harm can be off-set by the provision of other comparable open spaces in a suitable location. An Alternative Site Assessment was submitted in support of the scheme, dated November 2023. Some time was spent at the

hearing reviewing the alternative sites put forward by the appellant. Many of these were ruled out by reason of their location, designation for other uses or care being only a small part of a more strategic land allocation. With this in mind, I am satisfied that the appellant has undertaken a reasonable and thorough review of alternative sites in the district and that none are suitable.

22. Nevertheless, I am not convinced that the requirements under the second part of the criterion would be satisfactorily complied with. The open space proposed would be formed of a combination of on-site provision and a financial contribution of £12,935.48. Overall, this would still result in a reduction of open space, albeit some of the new open space would be more accessible than the present POS. I am not convinced that the provision in this respect could reasonably be described as providing open space of a comparable quality, size, character and useability in a suitable location. The proposed development would fail to accord with criterion d). However, this does not change my conclusion in respect of criterion c), above.
23. In reaching my conclusion in respect of criterion c), I do not take the potential loss of POS lightly. The overall objective of LP Policy OS9 is to ensure that open space is protected. Nevertheless, I have found that the appellant, in this particular case, has provided highly specific and compelling evidence for the demonstrable need for the development. Overall, the proposed development would accord with the relevant provisions of LP Policy OS9, which seeks to protect existing open space unless an exception applies.

Assessment against LP Policy DBE3

24. The design of the proposed development, in and of itself, would assimilate to an acceptable standard with established built form to the east side of Old Thanet Way.
25. Nevertheless, the appeal site, as an undeveloped, open and verdant site, provides a welcome visual and physical break in built form either side of Old Thanet Way. This openness would be eroded as a result of the proposed development, introducing built form and substantial areas of hardstanding where there is currently, and historically, none. Ultimately, the proposed development would have a harmful urbanising effect on the character and appearance of the surrounding area. By reason of the mitigating factors of the proposed development, including its overall scale, together with the retention of and enhancement of existing landscaping, this harm could reasonably be described as moderate.
26. Overall, the proposed development would fail to accord with the relevant provisions of LP Policy DBE3, which in summary seeks to ensure high quality design in development which respects its context. Unlike LP Policy OS9, there is no requirement under LP Policy DBE3 to weigh identified harm against any public benefits. This is a matter dealt with below.

Other Matters

Housing supply

27. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply. The appellant sets out a supply of 3.99 years. The Council sets out a supply of 4.37 years. In either case, the Council is falling short in respect of supply. The Council has also confirmed that the results of the Housing Delivery Test 2023 show a delivery rate over the past 3 years of 67% of its requirement.
28. As such, the provisions of Framework paragraph 11.d are engaged. This sets out that where the policies which are most important for determining the application are deemed out of date, permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed, or (ii) 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.

29. The Council claims that the appeal site should be deemed Local Green Space (LGS), which is specifically listed at footnote 7 of the Framework. LGS is defined in Framework paragraphs 106 and 107, with the process of designation through local and neighbourhood plans. Paragraph 108 goes on to confirm that LGS designations should be given special protection, consistent with the Green Belt. Whilst I accept that the site is designated as POS, there is no substantive evidence before me to demonstrate that the site, or wider designation, formally constitutes LGS, as defined in the Framework.
30. Given my findings in respect of LGS and in relation to the main issue above, the application of policies in the Framework that protect areas or assets of particular importance, as per paragraph 11.d(i), do not provide a strong reason for refusing the development proposed. In line with paragraph 11.d(ii), I am required to consider if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
31. I have set out above some of the social benefits of the proposed development. In particular, that the proposed development would contribute to providing desperately needed care accommodation in the district. I give this public benefit substantial weight. Moreover, the Planning Practice Guidance sets out that the provision of 1.8 care beds is equivalent to a single dwelling. This means that the proposed development would provide the equivalent of 42 dwellings towards the Council's housing shortfall. I give this public benefit substantial weight. Additionally, there would be other benefits, including through employment during construction and following completion of the development. I give this public benefit moderate weight.
32. Set against that, the adverse impacts identified in respect of character and appearance would not significantly and demonstrably outweigh the substantial public benefits of the proposed development. Therefore, the presumption in favour of sustainable development applies and paragraph 11.d indicates that permission should be granted.

Third party comments

33. I note that a number of objections have been received from nearby residents and others. Matters raised include highway safety, sustainability, overlooking and light pollution, drainage and flooding, biodiversity and archaeology.
34. There is no dispute between the Council and appellant in relation to highway safety matters. Kent County Council highways officers have confirmed no objection to the proposed development, subject to the inclusion of conditions. I have no compelling evidence before me to come to an alternative conclusion on this matter. Archaeology, sustainability and air quality specialists were also consulted during the course of the application and no objections were received. I have no compelling evidence before me that would lead me to an alternative conclusion in respect of those matters. Matters relating to drainage, flooding and biodiversity have been agreed between the Council and appellant. I have no reason to disagree with those findings.
35. I acknowledge concerns raised relating to overlooking, loss of light and noise pollution. However, the development would be positioned approximately 52m away from the residential properties on the opposite side of Old Thanet Way and approximately 54m away from the nearest property on Clifford Road. There is no dispute between the Council and appellant in this regard and, based on the submitted evidence and my observations on site, I have no reason to come to an alternative conclusion.

Heritage assets

36. The appeal site is located within the wider surroundings of a Grade II listed building, Little Millstrood. Mindful of the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have had special regard to the desirability of preserving its setting. The largely verdant surroundings of the buildings, of which the appeal site forms a part, positively contributes to its significance. Nevertheless, given the location, separation distance and extent of the proposed development, I consider that it would preserve the setting of this listed building and the contribution that setting makes to its significance. I note the Council had no concerns in this regard either

Special Protection Area

37. The appeal site is within the Zone of Influence of the Thanet Coast and Sandwich Bay Special Protection Area (SPA). All public bodies have a duty to take reasonable steps to further the conservation and enhancement of this designated area. There is the potential for significant impacts on the SPA identified as a result of any net increase in residential development within the zone of influence. This is principally due to pressures on the site by reason of its attractiveness as a location for recreation.
38. The Conservation of Habitats and Species Regulations 2017 (the Regulations) require competent authorities, before granting consent for a plan or project, to carry out an appropriate assessment in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects.
39. The Council's position is that future residents of the proposed development (as a care home) would not regularly be leaving the site. Moreover, external amenity space would be provided on-site. Therefore, no mitigation in the form of SAMMS (Strategic Access Management and Monitoring Plan) contributions for recreational impacts on the SPA have been sought in this particular instance. Based on the evidence before me, I have no reason to disagree with those findings. Natural England has been consulted on this particular approach, which is case-specific, and has confirmed its satisfaction.
40. There is no evidence before me to demonstrate that any other adverse effects exist. I therefore conclude that the proposed development would not lead to adverse effects on the integrity of the protected sites.

Unilateral Undertaking

41. A signed Unilateral Undertaking (UU) has been submitted by the appellant. This would secure the provision of an open space contribution of £12,935.48.
42. Paragraph 58 of the Framework and Regulation 122 of the CIL Regulations sets out three tests that planning obligations must meet. Firstly, they must be necessary to make the development acceptable in planning terms. Secondly, they must be directly related to the development. Thirdly, they must be fairly and reasonably related in scale and kind to the development.
43. I am satisfied that the planning obligations would meet the requirements of the Framework and the CIL Regulations.

Conditions

44. The Council has provided a list of conditions, agreed with the appellant, that it suggests should be applied in the eventuality that the appeal is allowed. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance.
45. In addition to requiring commencement within the relevant statutory period, I have imposed conditions requiring adherence to the relevant plans and relating to details of reserved

matters, for certainty. Conditions relating to materials are imposed in the interests of character and appearance.

46. Conditions relating to ventilation systems and a construction environmental management plan are necessary in the interests of the protection of the living conditions of existing and future residents. Conditions relating to the protection of existing trees are imposed in the interests of tree health and the character and appearance of the area. Conditions relating to drainage and flooding have been imposed. These are necessary in the interest of sustainability and to avoid flood risk.
47. Conditions requiring the submission of an ecological enhancement plan, details of the translocation of protected species and an external lighting plan are required in the interests of sustainability and the protection and enhancement of biodiversity. Conditions relating to a travel plan and access arrangements for pedestrians, car and cycle parking are required in the interests of sustainability and to ensure appropriate provision of access and parking spaces. Conditions relating to vehicular access and loading are necessary in the interest of highway safety.
48. Conditions relating to the protection of trees, a construction environmental management plan, sustainable drainage measures and ecological translocation and enhancement measures are pre-commencement as they are necessary for certainty and to ensure that any potential mitigation is properly designed in prior to the commencement of development.

Conclusion

49. For the above reasons, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

A Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Dan Blake	DHA Planning
Matthew Woodhead	DHA Planning
Ryan Nicholls	Aspire LPP Limited
Louis Wilkin	Aspire LPP Limited
Zak Karbani	Aspire LPP Limited
Chris Jenkinson	Jenk Landscape Design and Planning
Nigel Newton Taylor	Healthcare Property Consultants Ltd

FOR THE COUNCIL

Kelly Tonkin	Canterbury CC
Vic Hester	Canterbury CC

INTERESTED PARTIES

Valerie Kenny	Thanet Way Residents Association
Angela Boddy	Thanet Way Residents Association

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Approval of the details of the landscaping of the site (hereinafter called the 'reserved matters') on land identified within the outline application boundary shall be obtained from the Local Planning Authority in writing. The development shall be carried out in accordance with the approved details.
- 3) Applications for approval of the reserved matters must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.
- 4) The development hereby approved shall be carried out in accordance with the submitted drawings:
 - Site Location Plan - Drawing no. PL-001 C
 - Proposed Site Plan - Drawing no. PL-002 F
 - Proposed Block Plan - Drawing no. PL-011 D
 - Proposed Ground Floor Plan - Drawing no. PL-003
 - Proposed First Floor Plan - Drawing no. PL-004
 - Proposed Second Floor Plan - Drawing no. PL-005
 - Proposed Streetscene - Drawing no. PL-010
 - Proposed North and West Elevations - Drawing no. PL-009
 - Proposed South and East Elevations - Drawing no. PL-008
 - Proposed Roof Plan - Drawing no. PL-007 A
 - Proposed Roof Space Floor Plan - Drawing no. PL-006
 - Proposed Access Arrangements - Drawing no. 2023/6803/003 P6
 - Off-Site Highway Works - Drawing no. 2023/6803/004 P3
- 5) No development shall take place on the site until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented and shall remain in place until the completion of the development.
- 6) No development shall take place on the site until details of the means of foul and surface water disposal, including a detailed sustainable surface water drainage scheme for the site and a timetable for their provision, have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 7) No works of clearance, site preparation or development shall take place on the site, unless protective tree fencing is erected in the locations shown on the Proposed Site Plan PL-002 as set out in the submitted David Archer Associates Tree Survey. Once erected, the fencing shall be retained in-situ until the completion of the development.
- 8) No works of clearance, site preparation or development shall take place on the site until a suitable translocation site has been identified and agreed in writing by the Local Planning Authority as part of a Comprehensive Reptile Mitigation Strategy. The Strategy should include detail regarding the size and suitability of the proposed translocation site(s), as well as a reptile translocation methodology (including reptile

- exclusion fencing specifications, site habitat creation measures and long-term management plan) and detail regarding how the receptor site(s) is legally secured on long-term management.
- 9) Prior to commencement of the development hereby approved, an ecological enhancement plan including a timeframe for its implementation and a management regime for its on-going provision shall be submitted to the Local Planning Authority for its written approval. The plan should demonstrate how the site will avoid a biodiversity net loss and provide opportunities to enhance biodiversity through planting and other ecological enhancement features within the site. The approved planting and other ecological enhancement features shall be fully implemented prior to the first occupation of the development and retained as such thereafter in accordance with the management regime.
 - 10) Prior to their first use in the development hereby permitted, details of the materials to be used for the external finishes of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full and retained as such thereafter.
 - 11) Prior to the first use of the development, full design and installation details of a ventilation system for food cooking and preparation rooms shall be submitted to and approved by the Local Planning Authority. The approved details shall be implemented in fully and retained as such thereafter.
 - 12) Prior to the first use of the development, the access shown on approved drawing 2023/6803/003 Rev P6 shall be provided and retained as such thereafter.
 - 13) Prior to the first use of the development, the right turn lane on (Old) Thanet Way A2990 as shown on the approved plan 2023/6803/003 P6 shall be provided and retained as such thereafter.
 - 14) Prior to first use of the approved access, the first five metres of the access in the site measured from the back edge of the highway shall be constructed of a bound surface material and retained as such thereafter.
 - 15) Prior to the first occupation of the development, the area shown for vehicle loading/unloading and turning facilities on the approved drawing shall be provided and retained as such thereafter.
 - 16) Prior to the first occupation of the development, the area shown on the approved drawing PL-002 Rev F for the parking of vehicles shall be provided and retained as such thereafter.
 - 17) Prior to the first occupation of the development, full details of the secure cycle storage facility as located and shown on the approved drawing shall be submitted to and approved in writing by the Local Planning Authority. The storage facility shall be provided upon occupation of the development and retained as such thereafter.
 - 18) Prior to the first occupation of the development, the pedestrian crossing and footway on (Old) Thanet Way A2990 from the site access to Millstrood Road roundabout as shown on the approved plan 2023/6803/004 P3, shall be provided and retained thereafter in accordance with the approved drawing.
 - 19) Prior to the first occupation of the development, a verification report demonstrating that the translocation of reptiles from the appeal site to the proposed receptor sites has been undertaken shall be submitted to and approved in writing by the Local Planning Authority.
 - 20) Prior to the first occupation of the development, details of external lighting for and across the site shall be submitted to and approved in writing by the Local Planning

Authority. The approved details shall be implemented and retained as such thereafter.

- 21) The development shall be carried out in accordance with the submitted Travel Plan, which shall be put into action and adhered to throughout the life of the development, or that of the Travel Plan itself, whichever is the shorter.
- 22) The means of surface water disposal, required under Condition 6, shall incorporate measures to ensure that there will be no discharge of surface water onto the highway.

END OF SCHEDULE