



Appeal Decision

Site visit made on 11 March 2025

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/Z2260/W/24/3351628

22A Westbrook Road, Margate, Kent CT9 5AU

- 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 Christopher Wyer against the decision of Thanet District Council.
 - The application Ref is F/TH/24/0055.
 - The development proposed is change of use of commercial premises to rear of 22 Westbrook Road into 1 dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For accuracy, I have corrected the street name in the development description.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on:
 - the living conditions of occupants of no 24 Westbrook Road, with particular regard to privacy; and
 - the integrity of European sites.

Reasons

4. The building is currently in use as a commercial premises for the appellant's landscaping business. The ground floor area is used for storage and the first floor is used as a workshop and store. The appeal building adjoins the rear of no 22 Westbrook Road which has a flying freehold comprising a bedroom and bathroom at first-floor level that project over the appeal building's storeroom.
5. Westbrook Road is predominantly residential in use and comprises a mix of period properties. A row of buildings at Canterbury Road backs onto the appeal site and includes shops and residential uses. The area has a compact, dense pattern of development and an urban character.
6. The main elevation of the appeal building runs parallel to the modest rear garden of no 24 Westbrook Road. The building is separated from the shared boundary by a narrow yard. The existing first-floor windows, along with no 22's bedroom window, overlook no 24's rear garden.
7. The rear elevation of two and three-storey buildings at Canterbury Road face the rear of no 24. However, gardens provide some separation, and trees and shrubs at

the end of no 24's garden provide a degree of screening. Nonetheless, no 24's rear garden is presently overlooked by surrounding buildings.

8. The appellant asserts the first floor is used for long periods of time, such as by tradespersons using a work bench in front of the window. However, I have been provided no evidence of the intensity of the use of the first floor, such as the number of persons and operational hours. At time of my site visit, most of the first-floor area was in use for storage of materials and tools, suggesting any existing overlooking from the building would be occasional.
9. The appellant asserts the proposed residential use would provide fewer opportunities for overlooking, since the first-floor windows would serve bedrooms that would be used infrequently during the day. However, I cannot be certain that future occupiers would use the proposed bedrooms only for changing and sleeping as speculated by the appellant. The two first-floor bedrooms could be used at any time of the day and would likely be in regular use. Therefore, I consider the proposed two-bedroom dwelling would represent an intensification of the use of the building. This intensification would increase the perception of overlooking for users of no 24's rear garden.
10. The proposed development would replace the existing first-floor windows with obscure-glazed, sliding sash windows. The obscure-glazed windows would be the only eye-level windows serving the bedrooms. Therefore, occupants would be incentivised to open the windows to achieve an external outlook. When opened, such as to provide ventilation or outlook, the windows would provide opportunities for direct overlooking of no 24's rear garden.
11. The opening distance of the upper sash could be restricted. However, the submitted plans do not provide measurements of the window heights relative to the floor and it is unclear if restricted openings would be above eye-level. Therefore, I cannot be certain that limiting the opening of the windows would adequately prevent overlooking.
12. The appellant asserts the existing commercial use has the potential to generate odour and noise such as through use of mechanical tools. However, I have no substantive evidence that the existing commercial use is detrimental to the living conditions of occupants of nearby dwellings, and therefore it is not demonstrated that change of use would offer greater compatibility with surrounding uses.
13. The proposed dwelling's first-floor windows would appear prominent and feel physically close to users of no 24's rear garden. Together with the intensification of the use of the building, the proposed arrangement of windows would increase the perception of overlooking and would create opportunities for direct overlooking of no 24's rear garden that would be more harmful than the current arrangement of surrounding buildings. The proposal would erode the privacy of occupants of no 24 Westbrook Road and would amount to significant harm to living conditions.
14. The proposal would therefore conflict with Policy QD03 of the Thanet Local Plan (TLP) which requires new development be compatible with neighbouring buildings and spaces and not lead to unacceptable living conditions through overlooking.
15. In addition, the proposal would not satisfy paragraph 135 of the National Planning Policy Framework (the Framework) which requires proposals promote a high standard of amenity for existing users.

European sites

16. The site is within the zone of influence (ZOI) of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations).
17. The conservation objectives for the SPA are to ensure the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The qualifying features of the SPA are its populations of European golden plover, ruddy turnstone, and little tern.
18. The proposal would provide one additional dwelling, with an associated increase in local population. Natural England advises that population increase within the ZOI is likely to have a significant effect on the interest features of the SPA through increased recreational disturbance. The proposal would therefore have a likely significant adverse effect on the qualifying features of the SPA, alone or in combination with other similar development.
19. The Habitats Regulations require permission only be granted after having ascertained that it will not affect the integrity of a European site. I may consider measures to secure mitigation with a view to ensuring that the proposal would not adversely affect the integrity of European sites.
20. The Council's Strategic Access Management and Monitoring Plan (SAMM) addresses the impact of recreational activities on the SPA and requires all housing developments provide a financial contribution toward the district-wide mitigation strategy. Natural England is of the view that if these measures are implemented, they will be effective and reliable in preventing the harmful effects on the SPA and Ramsar site for the duration of the development. The appellant indicates they are willing to provide a financial contribution toward the SAMM, suggesting this could be secured by a condition or other mechanism.
21. The Planning Practice Guidance advises that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases and encourages parties to enter into such agreements prior to determination to deliver sufficient certainty for all parties¹. The proposal contains no mechanism to secure the contribution, or any alternative solutions or compensatory measures.
22. Therefore, I cannot be certain that the development would not adversely affect the integrity of the site. The provision of a single dwelling would not be sufficient to amount to overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted. I therefore find that the proposed development would result in significant harm to the integrity of the SPA.
23. The proposal would therefore conflict with TLP Policy SP29 which requires development mitigate against the in-combination effects of recreational pressure on the Thanet Coast and Sandwich Bay SPA and Ramsar site in accordance with the SAMM.

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

Other Matters

24. The proposal would make a small contribution of one additional dwelling to the area's housing supply. The Council achieved a measurement of 67% against the identified housing targets in the 2023 Housing Delivery Test. Therefore, there is a shortfall in housing supply in the Council's area.
25. In this circumstance, paragraph 11(d) of the Framework is engaged unless policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development². As set out above, I have found that in the absence of secured mitigation, the proposal would harm the integrity of European sites. Paragraph 192 of the Framework safeguards habitats sites and thus provides a strong reason for refusal. As a result, the presumption in favour of sustainable development would not apply.

Conclusion

26. The proposal would conflict with the development plan as a whole and there are no other considerations which outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

E Dade

INSPECTOR

² Paragraph 11d(i)