



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: 21 March 2025

Appeal Ref: APP/Z2260/W/24/3347256

Land to the rear of 11-19 Brunswick Road, Birchington CT7 0EE

- 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 P Arezina against the decision of Thanet District Council.
 - The application Ref is F/TH/24/0257.
 - The development proposed is erection of two detached dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the proposed development would be in a suitable location, having regard to the local development strategy;
 - the effect of the proposed development on the character and appearance of the area, including its effect on protected trees;
 - the effect of the proposed development on the integrity of European sites; and
 - whether other material considerations outweigh any harm identified such as to justify the development.

Reasons

Whether in a suitable location

3. The appeal site is behind a row of dwellings fronting onto Brunswick Road. The site adjoins the built area of the village of Birchington.
4. The Thanet Local Plan (TLP) describes Birchington as a large village with a good sized and well-functioning commercial centre which serves the surrounding residential community. The TLP considers Birchington to be a sustainable location for new development with good access to local services, including schools and other community facilities, as well as convenient transport options. The site is within walking distance of the town centre and a range of services and facilities including a rail station, bus stops, primary school, and a leisure farm park with shop, café and children's play areas.
5. The site is within a location where TLP Policy SP24 supports certain types of development deemed appropriate in a rural area. The Council accepts Policy

SP24 does not restrict residential development in this location and the proposed dwelling is not considered to be isolated.

6. However, Policy SP24 also requires development proposals to be of a form, scale and size which is compatible with, and respects the character of, the local area and surrounding countryside and its defining characteristics, with any environmental impact avoided or mitigated.
7. The Birchington Neighbourhood Plan 2023 (BNP) recognises that numerous small to medium-size green spaces and pockets of woodland contribute to the essential character of different areas and help to encourage and sustain biodiversity¹. The BNP designates land to protect it from development, where not already covered by policies of the TLP². The BNP's Open Spaces and Local Green Spaces map³ indicates the appeal site is within designated open space, no 10 (OS10).
8. OS10 encompasses the appeal site, allotments to the south, and woodland to the north. The site and adjoining woodland are not accessible to the public and have no recreational value. However, the appellant accepts the site forms part of a green corridor into the village.
9. BNP Policy B9 protects open spaces from development, affording them equal protections to those set out in TLP Policy SP32. It is common ground between the parties that the site is protected by BNP Policy B9.
10. TLP Policy SP32 permits proposals on protected open spaces only where the development is for recreation or tourism use; where there is an overriding need for the development; or, where there would not be material harm to the open space's visual or recreational amenity.
11. The proposal is for residential development and therefore would not be of a type positively supported in this location by Policy B9. Whilst there would be no harm to recreational amenity, the proposal is contrary to NP Policy B9 in this regard.

Character and appearance

12. The site is to the rear of nos 11-19 Brunswick Road and comprises mature trees, an outbuilding, shed, greenhouse, compost bins, fruit trees and planting. It is understood the site was formerly used as an extended garden to no 11.
13. Brunswick Road and connecting streets have a linear pattern. Dwellings include a mix of two-storey terrace and semi-detached properties, and single-storey bungalows. The area has a suburban character.
14. Trees within the site are generally tall and exceed the height of nearby dwellings. The site's trees, together with the adjoining woodland and group of trees to the front of the allotments, form a continuous canopy along the skyline.
15. The site's trees are visually prominent in long distance views from Brunswick Road and Park Avenue. The appeal site therefore contributes positively to the character of residential development at Brunswick Road and nearby streets through providing a green, sylvan backdrop of trees.

¹ Paragraph 7.1.6

² Paragraph 7.1.7

³ Page 41

16. The site's eastern boundary abuts the highway of Park Lane, where trees within the site and boundary vegetation screen views of built development to road users, thereby contributing to a green and rural character on the approach to Birchington.
17. The site has been the subject of a Tree Preservation Order (TPO) since 1952⁴. There is disagreement between the parties regarding the age of trees, and whether the 1952 TPO would apply to all trees presently on the site.
18. The Council has recently reviewed the TPO, with a new TPO confirmed in August 2024 which identifies 17 trees on the site⁵. The appellant considers the 2024 TPO should not be relevant to the appeal as it was not in effect at the time of preparing the application or the Council's determination. However, the 2024 TPO is in force at time of my decision and is relevant insofar as it protects specific trees in the interests of amenity and prevents tree removal or works without written consent.
19. Irrespective of the 2024 TPO, section 197 of the Town and Country Planning Act 1990 (as amended) contains a general duty to respect trees, requiring adequate provision is made for the preservation and planting of trees. Moreover, TLP Policy QD02 requires development proposals retain, enhance and protect existing features including trees.
20. The proposal would provide two three-bedroom chalet-style dwellings with living accommodation in the roof space. The plots would each have two car parking spaces, secure bike and bin storage, and private rear gardens. The proposed development would necessitate the removal of trees that are the subject of the 2024 TPO.
21. The Council has raised no objection to the removal of decayed tree T13, which at time of my site visit, had been removed. However, the proposed development would require removal of four additional trees, namely trees T5, T6, T11, and T12.
22. The tree survey schedule identifies those trees as mature, in good physiological and structural condition with an estimated remaining contribution of 20+ years. The survey does not support the assertion that the four trees are of little value or no special interest, but indicates the trees are of moderate quality and value.
23. Trees T5, T6, T11, and T12 are set in from the site boundaries, but due to their heights are visible from longer distance views. Therefore, the proposal would erode the tree canopy cover within skyline views through the loss of trees.
24. The Proposed Tree Mitigation and Basic Root Protection plan shows the proposed vehicular access, driveways and parking areas would be close to the stems of trees T7, T8, and T9, and would be within the root protection areas (RPAs) of trees T1, T2, T3, T7, T8, T9, and T10.
25. The hardstanding and parking areas would comprise an above ground-level, reinforced eco-paving gravel grid. However, it is unclear if the parking grid offers root protection, and the proposal does not provide assessment of relative levels between the access track and proposed driveway to confirm the construction is achievable. In addition, it is unclear how tree stems would be protected from impact damage during construction and use.

⁴ TPO ref: M/TPO/4(1952) G1

⁵ TPO ref: TH/TPO/5/2024

26. The footprint of the proposed dwellings would encroach into the RPAs of trees T4, T8, T9, and T10. It is unclear what effect siting the proposed dwellings within RPAs would have on the health and integrity of those trees.
27. The site is fully enclosed by large trees. Tree canopies would overhang garden areas and would be close to the windows and doors on the southeast facing elevation of the plot 2 dwelling. Whilst the site layout seeks to minimise conflict with trees, dwellings and areas of hardstanding would nonetheless be sited close to trees. The proximity of trees can result in development pressure to fell or prune trees due to concerns regarding lack of light and fear of falling trees and branches.
28. The appellant would accept conditions for long-term tree protection and management to ensure the well-being of trees. However, in the absence of such details at this stage, I cannot be certain that the proposal would not harm the integrity of existing trees that are proposed to be retained.
29. The proposal would include planting of eight trees, which together with existing trees and vegetation would serve to generally screen the proposed development from Brunswick Road and Park Lane. However, the proposed trees are large growing species, which the plans indicate would be planted around 5m apart. The Council's Arboricultural Consultant advises this would result in restricted growth, limit development of full crowns, and add to the sense of trees enclosing the site and restricting light to dwellings and gardens.
30. Furthermore, whilst details of growth rates have not been provided, it would likely take a long period of time for the proposed trees to adequately mitigate the visual effect of the removal of trees T5, T6, T11, and T12.
31. The dwellings would be timber-clad, of low height, and incorporate vernacular design features. However, it is uncertain whether the proposal has been informed by design guidance referred to by the BNP, and such design features would not mitigate the effect on the street scene of the proposed loss of trees.
32. The appellant has drawn my attention to a nearby site allocation for major development. The presence of other new development is not justification for the loss of important landscape features.
33. As set out above, the proposal would result in the loss of trees that make an important, positive contribution to the character of the area. Furthermore, the proposal fails to demonstrate that the proposed development would not result in development pressure for future felling and pruning of other trees within the site. The proposed development would erode the visual amenity of the site and, having particular regard to trees, would harm the character and appearance of the area.
34. The proposal would therefore conflict with TLP Policies SP24, SP26 and QD02 which together require proposals demonstrate the development will conserve and enhance Thanet's local distinctiveness, promote or reinforce the local character of the area, including through protecting and enhancing existing features such as trees that positively contribute to the quality and character of an area, and incorporate appropriate tree planting.
35. In addition, the proposal would conflict with BNP Policy B10, which requires new development adjoining open spaces and countryside reflect the character of the area and respect the setting provided by such spaces. The proposal would not

comply with BNP Policy B9, which affords the protections of TLP Policy SP32, including that development does not harm the visual amenity of the area.

36. Furthermore, the proposal would not comply with BNP Policy B1, which requires new development demonstrate through its Design and Access Statement how the development would accord with the Birchington Village-wide Design Guidelines and Site Design Guidance and Codes.

European sites

37. The site is within the zone of influence (ZOI) of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Ramsar, and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI). European sites are afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
38. 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.
39. The proposal would provide two additional dwellings, 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.
40. The Habitats Regulations require that permission may 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.
41. 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.
42. During the appeal, a revised Unilateral Undertaking (UU) was submitted in response to previous concerns raised by the Council. The UU secures a financial contribution toward the SAMM. I therefore consider that appropriate mitigation has been secured and the financial contribution is necessary to make the development acceptable in planning terms.
43. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that as a responsible public body it will utilise the funds for the purpose of administering the mitigation strategy. Therefore, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
44. Therefore, subject to the secured mitigation, the proposal would not have significant effects on the integrity of European sites.

45. The proposal would comply with TLP Policy SP29 which requires development comply with the SAMM to mitigate against the in-combination effects of new development, through the pathway of recreational pressure on the Thanet Coast SPA and Ramsar site.

Other considerations

46. The proposed development would contribute two additional dwellings to the area's housing stock.
47. The district has an ageing population, and the Strategic Housing Market Assessment estimates an increase in persons with long term health issues or disability over the plan period. The proposed dwellings would include a double bedroom and bathroom on the ground floor, and therefore would provide accommodation that is accessible for persons with limited mobility.
48. The proposed development would contribute to a reduction in carbon emissions by incorporating energy efficient construction and renewable energy technologies, such as solar panels and air source heat pumps. The location within walking distance of local services would reduce the need to travel by car. The appellant asserts the proposal would include provision of a new footway along Park Lane to enhance pedestrian safety and accessibility. However, details of the footway are not shown on the submitted plans, and it is unclear what mechanism would secure its provision.
49. The proposed development would support the local economy through generating employment through construction and supporting local supply chains. Occupants of the proposed dwellings would provide additional finance through payment of council tax and would support local shops, facilities and services.
50. Whilst the proposal pre-dates the introduction of the mandatory biodiversity net gain requirement, the proposal includes a biodiversity enhancement plan to provide a reptile area, hedgehog friendly holes, log stacks for invertebrates, wildflower area, bird/bat boxes, and tree and mixed hedgerow planting.

Planning Balance

51. 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.
52. In this circumstance, paragraph 11(d) of the National Planning Policy Framework (the Framework) is engaged, whereby planning permission should be granted unless (i) policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development, 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, and having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
53. As set out above, I have found the effects of the proposed development on the integrity of European sites would be adequately mitigated. Therefore, the Framework's policies that protect areas of particular importance do not provide a strong reason for refusal.

54. Footnote 9 lists the Framework's key policies for the purposes of paragraph 11d(ii). Of particular relevance are paragraphs 84, 110, 115, 129, 135, and 139.
55. The proposed development would not be isolated and would be in an accessible location with opportunities for travel by public transport. I have been provided no substantive evidence to dispute the Council's conclusions that the development would not result in a significant increase in harm to highway safety. The proposal would therefore accord with paragraphs 84, 110, and 115.
56. Framework paragraph 129 requires proposals make efficient use of land, taking into account the desirability of maintaining an area's prevailing character and setting. As set out above, the proposal would harm the character and appearance of the area through its effects on existing trees. The proposal would not satisfy paragraph 135 of the Framework which requires proposals be sympathetic to local character including the surrounding landscape setting and establish or maintain a strong sense of place, and paragraph 139 which indicates development that is not well designed should be refused.
57. In addition to those key policies, the proposal would conflict with paragraph 136 of the Framework which recognises the important contribution which trees make to the character and quality of urban environments. The proposal would not comply with relevant policies of the Framework, and the conflict between the proposal and TLP Policies SP24, SP26 and QD02 therefore carries significant weight.
58. Whilst the BNP is less than five-years old and includes policies for the provision of housing, it contains no site allocations to meet an identified housing requirement. Therefore, the provisions of paragraph 14 of the Framework, in which the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits, is not engaged in the determination of this appeal.
59. The two proposed dwellings would make a small contribution to the overall supply of housing. No mechanism has been provided to ensure the development would be occupied by older persons or people with disabilities. Due to the scale of the proposed development, the associated economic and environmental benefits would be small. Therefore, I afford modest weight to the scheme's benefits.
60. Consequently, even taking account the Framework's objective to significantly boost the supply of housing and the Council's housing land supply position, the adverse impacts of the proposal on the character and appearance of the area would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

61. 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