



Appeal Decision

Site visit made on 5 March 2025

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2025

Appeal Ref: APP/Z2260/W/24/3348601

Land East Side of Tivoli Park Avenue, Margate, CT9 5SH

(Easting: 635279 Northing: 169833)

- 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 Mssrs E and D Biela and Watts against the decision of Thanet District Council.
 - The application Ref is OL/TH/22/0499.
 - The development proposed is erection of 4 detached 4 bed dwellings, landscaping and highway improvements.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 4 detached 4 bed dwellings, landscaping and highway improvements at Land East Side of Tivoli Park Avenue, Margate, CT9 5SH in accordance with the terms of the application, Ref OL/TH/22/0499, subject to the conditions in the schedule below.

Preliminary Matters

2. The application is submitted in outline with access, layout and landscaping to be considered at this stage. I have dealt with the application on this basis, treating any references or material to other aspects of the development as illustrative.
3. A unilateral undertaking has been submitted, which seeks to address mitigation measures in relation to sites protected by the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), and highway improvements to the Tivoli Park Avenue/Tivoli Road junction. I return to these matters later in my decision

Main Issues

4. The main issues are the effect of the proposed development on a) the character and appearance of the area with particular regard to the loss of trees and open space; and b) the Thanet Coast and Sandwich Bay Special Protection Area (SPA), and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI), with particular regard to recreational disturbance.

Reasons

Character and Appearance

5. The application site comprises a mainly open, uneven grassed area of land at the corner of Tivoli Road and Tivoli Park Avenue. The site's northeastern portion also includes part of a former railway embankment. There are a number of trees both

along the embankment and which encircle the rest of the site. Some of these trees are subject to preservation orders.

6. The site forms part of a larger 'green' area which extends northwards along Tivoli Park Avenue, connecting to the tennis club and semi-detached housing beyond. On Tivoli Road, opposite the site, new houses were under construction on the former railway land. They appeared to be a modern continuation of the existing, more traditional mainly terraced houses which characterise this part of the road.
7. The appeal site and adjoining green space therefore provides a point of separation and transition between the denser housing of Tivoli Road and the more suburban character of Tivoli Park Avenue. The main parties acknowledge that the protected trees are not pristine specimens. Furthermore, as I saw on my site visit, the landscape value of the site is modest. Nevertheless, the site as a whole, provides a green space that contributes positively to the visual qualities of the area.
8. Many trees along the Tivoli Park Avenue and Tivoli Road frontages would be removed as part of the development and in particular as a result of the new access and visibility splays into the site. The proposed improvements at the Tivoli Park Avenue and Tivoli Road junction would account for the loss of some of the other trees. These improvements are works already planned to be undertaken by the Highway Authority and so the development would just bring their implementation forward. Therefore, these particular trees would eventually be lost regardless of whether the appeal is allowed.
9. There are no technical objections to the new access arrangements and junction improvements from either the Council or the Highway Authority. There is no substantive information which would lead me to a different conclusion in respect of the access works.
10. Some individual trees along these frontages are identified as remaining. However, notwithstanding that there would be some works within their root protection areas, retaining individual trees from what has been a tight grouping, where growth and shelter has been unbalanced, is not guaranteed to be successful.
11. The trees along the northwestern boundary of the site (T41 – T45) would also come under pressure from future occupiers of the houses, given the site layout and position of the gardens. Much of the rear garden of the southern most dwelling would be covered by the spread of the trees as would the side garden of the northern most dwelling. The Arboricultural Report notes that there will be shade cast by the trees. It also cautions that the 'relatively close proximity of existing large trees or potentially large deciduous trees to the proposed development may impose onerous future requirements for leaf clearance from gutters'. The report does not mention other aspects such as the inconvenience of dealing with fallen branches and other detritus associated with the trees which future occupiers would be likely to experience.
12. Thus, whilst future occupiers may be aware of the trees when purchasing the properties, the extent to which they would potentially interfere with day-to-day living, means that it is entirely credible that they would come under strong pressure for pruning or removal. Thus, in the fullness of time it is reasonable to conclude that the proposal would be likely to lead to the loss of many of these trees too.

13. It is suggested that there would be many permutations of layout which could overcome the relationship between the trees and the garden areas, but the issue of layout is one which is before me to determine as part of the appeal. As such, my decision must be based on the layout drawings submitted with the proposal.
14. The removal of the existing trees and associated changes would inevitably bring greater intervisibility between the site and its surroundings. Furthermore, four new detached dwellings and the associated development would also reduce the sense of openness across the site.
15. In mitigation, the layout positions the houses centrally within the main part of the site and away from the site's main frontages. There would therefore be scope for additional landscaping measures in these boundary areas including some replacement trees. Any replacement tree planting would be on a more limited scale than at present and would take time to establish and mature. Nevertheless, the proposed boundary planting would help to retain a landscape/planted aspect around these frontages and the Tivoli Park Avenue and Tivoli Road junction. The Council has not objected to the landscaping strategy per se and it would appear to achieve a reasonable level of coverage.
16. I am also mindful that the site forms part of a larger area of green space, the majority of which would remain, and that none of the trees to be lost are of the highest quality. Therefore, whilst these mitigating factors would lessen the overall effect, I find that there would nevertheless be a diminution to the prevailing environment and that some harm would still arise to the overall character and appearance of the area.
17. Consequently, the proposal would conflict with the requirements of Policy QD02 of the Thanet Local Plan 2020 (TLP) which, amongst other things, seeks to ensure existing features such as trees are protected, and that development promotes or reinforces the local character of the area.
18. The proposal would also be contrary to the National Planning Policy Framework (the Framework) insofar as it acknowledges the contribution trees make to urban environments and seeks to ensure development is sympathetic to local character.

Thanet Coast and Sandwich Bay SPA and Sandwich Bay and Hacklinge Marshes SSSI

19. The site lies within the Zone of Influence of the Thanet Coast and Sandwich Bay SPA and Sandwich Bay and Hacklinge Marshes SSSI. The sites provide passage, overwintering, and breeding habitat for bird species and are subject to statutory protection under the Habitats Regulations.
20. The proposed development would be likely to exacerbate existing recreational pressures on these sites. This risk, in combination with other plans or projects, could have a likely significant effect on the integrity of the protected habitats. I am therefore required to carry out an appropriate assessment.
21. The Council has produced a Strategic Access, Management and Monitoring Plan to ensure that no likely significant effect will result from recreational disturbance from development. This establishes a tariff based on unit size. The financial contribution would go towards such matters as educational and warning signage, outreach programmes and wardens. Natural England support his approach.

22. The unilateral undertaking before me commits the site owner to the appropriate level of contribution. Having undertaken an Appropriate Assessment, I conclude that the mitigation measures would avoid the proposed development having likely significant effects on the integrity of the protected sites.
23. On this issue I therefore find that the proposed development would not have an adverse effect on the Thanet Coast and Sandwich Bay SPA and Sandwich Bay and Hacklinge Marshes SSSI, with particular regard to recreational disturbance. It would consequently comply with TLP Policy SP29, the Framework, and the Habitats Regulations. Collectively, these seek to ensure developments protect sites of local, national and international conservation importance.

Legal Undertaking

24. In addition to addressing mitigation to the SPA and SSSI, the submitted unilateral undertaking also makes a financial contribution towards improvements of the Tivoli Park Avenue/Tivoli Road junction. These works would be necessary to ensure access to the site was appropriately provided. This provision accords with the requirements of the Highway Authority.
25. The Council has confirmed it has no concerns with the submitted legal agreement and having regard to the evidence before me, I am satisfied that these provisions are necessary to make the development acceptable, are directly related to the proposal and fairly and reasonably related in scale and kind to the development. As such, they would accord with the requirements of the Framework and Community Infrastructure Levy Regulations 2010.

Other Matters

26. The appeal site is privately owned. Despite suggestions of a covenant preventing the development of the land, the information submitted with the appeal indicates that the Council's legal department are content that any previous covenants are no longer valid or enforceable. There is no substantive evidence which would lead me to a different conclusion from that of the Council. It is therefore not a matter which has a bearing on my decision.

Planning Balance

27. I have concluded that in terms of the character and appearance of the area the proposal would conflict with the requirements of Policy QD02. While there is conflict with the development plan, given my findings on that main issue, I give this conflict moderate weight.
28. There is no dispute between the main parties that the Council is unable to demonstrate a five-year supply of deliverable housing land. The evidence before me is that the Council achieved only 75% of its housing delivery target for 2022. There is nothing to indicate that the position has significantly changed in the interim. Therefore, Paragraph 11(d)(ii) of the Framework is engaged.
29. The Framework's policies seek to boost the supply of housing. The scheme would only deliver 4 new houses, but they would be in a location reasonably well served by services and facilities. Furthermore, in the shorter term, the proposed development would also bring associated economic benefits such as construction expenditure and jobs. There would be some social benefits from the additional housing, and future residents would be able to contribute to the local economy and

to the vitality of the community. Given the housing supply difficulties, when considered collectively, the above represent considerable benefits of the proposal.

30. Overall, the moderate adverse impact associated with the site's effect on the character and appearance of the area does not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land and securing well-designed places. The proposal therefore benefits from the presumption in favour of sustainable development, and this indicates that permission should be granted.

Conditions

31. I have had regard to the conditions set out in the Committee Report and relevant guidance on the imposition of conditions. Both parties have had the opportunity to comment on the conditions. I have obtained the appellant's written agreement where it has been necessary for conditions to be pre-commencement conditions.
32. In addition to the standard time limits and reserved matter requirements, a condition specifying the approved drawings and documents is necessary in the interests of certainty. To ensure the development functions as intended, details of foul and surface water drainage; car and cycle parking; vehicular and pedestrian access arrangements; landscaping and materials; ecological enhancements; tree protection and lighting strategy are necessary.
33. Given the proximity of the site to the disused railway line there is a possibility of contamination and so a condition requiring assessment of any risk is reasonable and necessary. Similarly, a method statement for the removal of the existing abutment wall structure is also necessary. The nature of the works likely to be undertaken and the location of the site at a road junction means that a Construction Traffic Management Plan is necessary to minimise any adverse effect on the highway during construction.
34. The proposed development site lies in an area with significant archaeological potential. A condition is necessary to ensure that any archaeological features are examined and recorded appropriately.
35. As the Code for Sustainable Homes has previously been withdrawn by the Government, compliance with it cannot be achieved as there is no mechanism to measure, report, monitor or verify the process. Other energy efficiency conditions do accord with the Framework's objectives and are reasonable.
36. Given that electric vehicle charging points now fall under building regulations, and in the absence of evidence to the contrary, there is not a planning reason to secure such matters through this decision.

Conclusion

37. The proposal would not accord with the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal is allowed.

Stewart Glassar

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance and scale, ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) 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.
- 4) The development hereby permitted shall be carried out in accordance with the following drawings and documents:

Site Location Plan
Site Plan with Highways Layout - (2-)02 Rev B
Landscape Strategy - 0132/21/B/1A
Tree Report by Tree Ventures dated 2 October 2023
Ecological Impact Assessment by Native Ecology dated 17th December 2021
(Ref: 0316_R01_REV B_EcIA)
- 5) No development shall take place until:
 - (i) An archaeological field evaluation has been carried out in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority; and
 - (ii) Safeguarding measures to ensure the preservation in situ of important archaeological remains and/or further archaeological investigation and recording identified in the archaeological field evaluation have been undertaken in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority
- 6) No development shall take place until details of the means of foul and surface water disposal, including details of the implementation, management and maintenance of any proposed Sustainable Urban Drainage Systems; and measures to prevent the discharge of surface water onto the highway, 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 thereafter maintained.
- 7) No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:
 - i) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby permitted has been submitted to and approved in writing by the local planning authority;
 - ii) the site has been remediated in accordance with the approved measures and timescale; and

- iii) a verification report has been submitted to and approved in writing by the local planning authority.
- 8) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:
- i) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and
 - ii) a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.
- 9) No development shall take place until the precautionary mitigation measures for bats, badgers, hedgehogs, and nesting birds set out in Section 11 of the Ecological Impact Assessment by Native Ecology, have been submitted to, and approved in writing by the Local Planning Authority. The approved details shall be fully implemented.
- 10) No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. It should include:
- (a) Routing of construction and delivery vehicles to / from site
 - (b) Parking and turning areas for construction and delivery vehicles and site personnel
 - (c) Timing of deliveries
 - (d) Provision of wheel washing facilities
 - (e) Temporary traffic management / signage
 - (f) Measures to control noise affecting nearby residents
 - (g) Dust control measures
 - (h) Access arrangements
- The development shall be carried out in accordance with the approved Construction Traffic Management Plan for the duration of the works.
- 11) No development shall commence until a Method Statement for the removal of the existing abutment wall structure and construction of any slope abutting the highway, has been submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved method statement.
- 12) No development shall commence above slab level until samples of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples unless otherwise agreed in writing by the local planning authority.
- 13) No dwelling hereby permitted shall be occupied until the area shown on the approved plan numbered (2-)02 Rev B for vehicle parking and manoeuvring areas has been fully implemented. Thereafter these areas shall be kept available for such uses at all times.

- 14) No dwelling hereby permitted shall be occupied until the vehicular access and associated vehicle crossing point onto the highway, as shown on the approved plan numbered (2-)02 Rev B has been fully implemented and made operational.
The gradient of the access hereby permitted shall be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.
- 15) No dwelling hereby permitted shall be occupied until visibility splays of 2.4m x 33m to the west, and 2.4m x 30m to the east, have been provided to the access on to Tivoli Park Avenue as shown on the approved plan no. (2-)02 Rev B, with no obstructions over 0.6m above carriageway level within the splays, which shall thereafter be retained.
- 16) No dwelling hereby permitted shall be occupied until a pedestrian footway into the site, as shown on the approved plan numbered (2-)02 Rev B, has been fully implemented. The footpath shall thereafter be retained.
- 17) No dwelling hereby permitted shall be occupied until space has been laid out within the site in accordance with drawing no. (2-)02 Rev B for bicycles to be stored and those secure cycle parking facilities shall thereafter be kept available for the storage of bicycles.
- 18) No dwelling hereby permitted shall be occupied until the Building Regulations optional requirement of a water consumption rate of no more than 110 litres per person per day has been complied with.
- 19) No dwelling hereby permitted shall be occupied until full details of both hard and soft landscape works have been submitted to, and approved in writing by, the Local Planning Authority. The details shall include:
 - i) species, size and location of new trees, shrubs, hedges and grassed areas to be planted (which shall be based upon the landscape strategy numbered 0132/21/B/1A, and shall include a minimum of 6no. replacement trees);
 - ii) the treatment proposed for all hard surfaced areas beyond the limits of the highway (which shall be based upon the landscape strategy numbered 0132/21/B/1A);
 - iii) walls, fences, other means of enclosure proposed; and
 - iv) ecological enhancements to be provided within the site (which shall be based upon the landscape strategy numbered 0132/21/B/1A, and the ecological enhancements set out within section 12 of the Ecological Impact Assessment.
- 20) All hard and soft landscape works, including ecological enhancement features, shall be carried out in accordance with the approved details. The works shall be carried out prior to the first occupation/use of any part of the development, or in accordance with a programme of works to be agreed in writing with the local planning authority.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species as those originally planted, unless written approval to any variation is provided by the local planning authority. All ecological enhancement features shall thereafter be maintained.

- 21) A landscape management plan (including long term design objectives), management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of any dwelling hereby permitted. These areas shall be managed in accordance with the approved landscape management plan thereafter.
- 22) Existing trees, shrubs and hedgerows identified for retention within the development site or existing trees growing on an adjacent site, where excavations, changes to land levels or underground works are within the crown spread, shall be protected in accordance with BS5837:2012 using the following protective fence specification of Chestnut paling fence 1.2m in height, securely mounted on 1.7m x 7cm x 7.5cm timber posts driven firmly into the ground. The fence shall be erected in the location shown on the submitted tree protection plan numbered L875TPP within the Tree Report by Tree Ventures dated 2 October 2023.

The protective fencing shall be erected before the works hereby permitted or any site clearance work commences and shall thereafter be maintained until the development has been completed. At no time during the site works shall building materials, machinery, waste, chemicals, stored or piled soil, fires or vehicles be allowed within the protective fenced area. Nothing shall be attached or fixed to any part of a retained tree and it should not be used as an anchor point. There shall be no change in the original soil level, nor trenches excavated within the protective fenced area.

- 23) Prior to the installation of any external lighting a "lighting design strategy for biodiversity" for the site boundaries shall be submitted to and approved in writing by the local planning authority. The lighting design strategy shall:
- i) identify those areas/features on site that are particularly sensitive for badgers and bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
 - ii) show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory;
 - iii) provide details of the types of lighting to be used including their fittings, illumination levels and spread of light
 - iv) follow the precautionary mitigation measures set out in Section 11 of the Ecological Impact Assessment, and the recommendations within the Bat Conservation Trust's Bats and Lighting in the UK guidance.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy and these shall be maintained thereafter in accordance with the strategy.

END