
Appeal Decision

Site visit made on 16 June 2015

by G J Rollings BA(Hons) MA(UD) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 March 2016

Appeal Ref: APP/Z2260/W/15/3005322

Land adj Clifftop and Redriff, North Foreland Avenue, Broadstairs, Kent, CT10 3QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Sister Kathryn Lennon (FCJ Trustees) against the decision of Thanet District Council.
 - The application Ref OL/TH/14/0404, dated 25 April 2014, was refused by notice dated 22 August 2014.
 - The development proposed is the erection of 12 dwellings.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 12 dwellings at Land adj Clifftop and Redriff, North Foreland Avenue, Broadstairs, Kent, CT10 3QT in accordance with the terms of the application, Ref OL/TH/14/0404, dated 25 April 2014, subject to the list of conditions set out in Annex A.

Procedural Matter

2. An updated Unilateral Undertaking was submitted in October 2015. I have considered this as part of the third main issue, set out below.

Background and Main Issues

3. The application was submitted in outline form with all matters reserved for detailed determination at a later stage. It follows a previous appeal decision¹ for similar development on the same site, but now proposes 12 rather than 13 dwellings as then. The Council's reason for refusal related to matters of tree removal and biodiversity, although numerous third-party responses relate also to other matters. I consider the main issues to be:
 - The effect of the development on the character and appearance of the area, with particular reference to the loss of vegetation;
 - The effect of the development on the biodiversity of the area; and
 - Whether the proposal adequately provides for affordable housing and suitable mitigation for any potential impact on infrastructure.

¹ Appeal ref: APP/Z2260/A/13/2195975; decision date 4 December 2013.

Reasons

Character and appearance (trees)

4. The site is split into two portions, separated to the east and west of North Foreland Avenue. An existing building, Redriff, occupies the eastern portion, which extends to Cliff Promenade. Much of this area has previously been terraced and appears to have been laid out as a garden for the building during its history. Nonetheless, the site has been unused for some time, and there are pockets of substantial and relatively undisturbed vegetation, including mature trees.
5. Both portions of the site are subject to a Tree Preservation Order (TPO) encompassing individual tree specimens and a group adjacent to Cliff Paddock, adjacent to the northern boundary of the eastern part. The Council has defined the area, including the site, as an Area of High Townscape Value (AHTV), a local, non statutory, designation. The site plan illustrates that the 12 detached houses would be arranged along the existing street frontages, in a form similar to that of existing, neighbouring development. Six dwellings would be arranged on the western portion of the site, an additional two flanking either side of Redriff on the eastern portion of the site, and the remaining four homes facing Cliff Promenade.
6. The main difference between the previous and current proposals is the omission of a dwelling to the north of Redriff, directly adjacent to Cliff Paddock, resulting in fewer trees being lost. The previous Inspector considered that the loss of trees proposed within that scheme would have had a harmful impact on the character and appearance of the site, and that replacement planting would not have mitigated the harm.
7. However, the tree protection plan for this revised scheme indicates that the majority of trees along the North Foreland Avenue frontage of the eastern portion of the site would be retained, albeit some trees would be lost to facilitate the formation of a building envelope on plot 1. These trees are within the cluster and their removal would have only limited impact on views from outside the site. Taking into account the appellant's Arboricultural Impact Assessment and supporting evidence, the removal of these trees would not have a significantly harmful impact on the character and appearance of the site. Their loss would not have a large impact on views from outside the site, and the retention of important trees would ensure the continuing contribution of the site to the overall townscape value of the wider area.
8. I have taken into account the advice set out in British Standard 5837:2012 regarding potential future demands on tree management as a result of the proximity of residential accommodation. However, the illustrative plans indicate that the proposed building envelopes on Plots 1 and 2 could sustain dwellings, whilst allowing sufficient clearance for root protection areas and the crown spread of retained trees, most of which are not protected by the TPO. Additionally, the clearances would allow sufficient space for future residents to enjoy adequate living conditions with regard to sunlight and daylight.
9. On the western portion of the site, the illustrative plot eight and plot nine layouts demonstrate that there would be adequate clearance given to the

protected walnut and holm oak trees. The removal of other trees within the cluster surrounding the existing driveway would have a detrimental impact on the existing appearance of this part of the site. However, unlike the eastern portion of the site, the general character of this part of the site is open. The retention of some mature roadside trees would ensure that the general existing landscape character of the site is retained. As various parties have pointed out, the development of the site would have an impact on its character and appearance. However, as referred to above, this scheme retains sufficient of the strategic vegetation, to ensure that there would be no significant harm with regards to this issue, in my judgement.

10. I therefore conclude on the first main issue that the proposed development would not have a significantly harmful effect on the character and appearance of the area, with particular reference to the loss of established vegetation. There would be no conflict with *Thanet Local Plan (2006)* (the Local Plan) Policies D1 or D2, which seek a high quality of design and to improve and protect the landscape character or areas, amongst other considerations.

Biodiversity

11. In relation to the biodiversity and ecology of the site and its surroundings the previous Inspector found that these matters would not be compromised by that proposal. In the appeal before me, new and updated information on this issue has been submitted by the Council, the appellant and other interested parties. The proposal would have a reduced impact on the existing vegetation on the site, when compared with the previous scheme, and the proposed site coverage of proposed buildings would also be reduced. There would also be a larger wildlife buffer than previously proposed, which was not accounted for in the previous appeal decision.
12. The site is adjacent to a Site of Special Scientific Interest (SSSI) and Special Protection Area (SPA). The National Planning Policy Framework (the Framework) states that development on land within or outside an SSSI should not be permitted, where it would have an adverse effect on its notified special interest features, unless the benefits of the development clearly outweigh its impacts (paragraph 118). Although the site has been cultivated in the past, its undeveloped and open nature provides a habitat for protected and other animal species. The appellant has submitted a planning obligation to offset the development's impacts on the SSSI and SPA, which was not accounted for in the previous appeal decision, and which is examined in next section of this decision.
13. The appellant's habitat surveys indicate the presence of bats, a protected species, and the site also provides foraging and transitory habitats for migratory bird species. The development would have a minimal effect on the former species, and the proposed mitigation measures would ensure that the proposal would not result in a breach of the protection afforded to a European Protected Species, the Habitats Directive, or Natural England Guidelines.
14. Concerns have been raised by various parties regarding the validity of the bird surveys. I have taken these into account, but note that the comments of Kent County Council's biodiversity officer, and Thanet Council officers, have verified the appropriateness of the appellant's findings. These are disputed by interested parties, but I consider that the measures proposed within the current scheme (including the retention of additional vegetation), and the

nearby presence of large, similar habitat areas for the relevant species, together provide appropriate levels of mitigation against impacts of development.

15. There are no protected plant species on the site, although the development would retain or replace some of the grassed areas, with appropriate measures proposed for the retained areas during the construction phase. I note the concerns of interested parties regarding the likely intensified cultivation of the land, including the possible use of fertilisers, but find that there is minimal evidence to suggest that their probable historical use on the site would have resulted in overall detrimental effects on biodiversity. Although the development would lead to a reduction in grassed areas, the protection of strategic areas and the incorporation of native species within the proposed landscaping would mitigate some of the loss of the existing open space by providing suitable replacement habitat areas for foraging faunal species. I am satisfied that the proposed mitigation measures, including the planning obligation, provide an appropriate level of protection to ensure the long-term biodiversity of the site, and surrounding areas.
16. On the second main issue I therefore conclude that there would be no harm to protected species arising from the scheme and that any harm to the SPA/SSSI would be mitigated through the legal agreement. There would be no conflict with Local Plan Policies D1 or H1, which together seek to ensure that new development is appropriate and limits its impacts on wildlife habitats, or the Framework, for the reasons set out above.

Affordable Housing and Infrastructure Mitigation

17. A planning obligation (unilateral undertaking dated 10 October 2016) has been completed and signed by the appellants, which provides for a payment of £523,710 to be made in lieu of on-site affordable housing in accord with LP policy H14. A further contribution of £622.68 (12 x £51.89) would also be made in respect of mitigation measures to avoid adverse effects arising from the development on nearby International and European designated sites of nature conservation interest, including the adjacent cliff top SSSI and SPA.
18. This is fully in accord with the recent practice of the Council, advised by Natural England. I agree that it is necessary to deal with the potential effects of the very limited increased disturbance to both summer and winter birds estimated to arise from the occupiers of 12 more houses locally and that the impact of the scheme on the SPA and SSSI would be adequately mitigated accordingly.
19. Overall, there is clear evidence that these sums are necessary to make the development acceptable in planning terms and that they are fairly and reasonably related in scale and kind to the proposal. They therefore comply with the relevant tests having regard to the Community Infrastructure Regulations and the planning obligation is a relevant factor in the determination of this appeal. Accordingly, I conclude on the third main issue that the scheme provides adequately for affordable housing and in terms of mitigation of impacts on infrastructure.

Conditions

20. The local planning authority has recommended conditions which I have considered in light of the tests set out in Planning Practice Guidance. All are necessary, reasonable and enforceable in the interests of securing an acceptable development in detailed terms for the reasons given by the Council, with the exception of the Council's Lifetime Homes condition, which has been omitted due to this standard no longer being applicable. Specifically, conditions 10, 12, 13 and 14 make provision for suitable mitigation measures, as set out within my considerations above.

Conclusion

21. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

G J Rollings

INSPECTOR

ANNEX A – LIST OF CONDITIONS

- 1) Approval of the details of the layout, scale and appearance of any buildings to be erected, the means of access to the site and the landscaping of the site, (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 2) Plans and particulars of the reserved matters referred to in Condition 1 above, shall be submitted in writing to the Local Planning Authority and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission.
- 4) The development hereby permitted shall be begun before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of:
 - i. archaeological field evaluation works in accordance with a specification and written timetable which has first been submitted to and approved in writing by the Local Planning Authority; and
 - ii. following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has 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 water disposal have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with such details as are agreed and thereafter maintained.
- 7) No development shall take place until a surface water drainage scheme, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include:
 - i. (if ground conditions suitable) soakaways designed for the critical 100 year plus climate change rainstorm event;
 - ii. Driveways and car parking areas to comprise permeable paving with porous sub-base designed to store the 1 in 100 year plus climate change critical rainstorm event. (as detailed in the Flood Risk Assessment by Monson, dated June 2012);
 - iii. Design provision for exceedance events so excess runoff is safely routed away from the dwellings;
 - iv. Rainwater harvesting and grey water recycling measures should also be incorporated where practicable; and
 - v. Details with regard to the proposed maintenance of the drainage scheme.

The scheme shall be implemented at the time of development and thereafter maintained in accordance with the approved details.

- 8) Details pursuant to Condition 1, shall include provision of areas for 3 off street car parking spaces and manoeuvring and turning facilities to adequately serve each plot, and shall be provided in accordance with standards to be agreed with the Local Planning Authority. Such facilities as approved shall be operational prior to the occupation of the units, and thereafter shall be maintained for their approved purpose.
- 9) Details pursuant to Condition 1 shall show vehicular sightlines for all new junctions and accesses measuring 2.4m x 25metres from the edge of the highway in both directions. These sightlines shall be provided and maintained free of obstruction prior to occupation of the part of the development to be served by the respective accesses.
- 10) 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 BS 5837: 2012 as detailed on submitted drawing 2853_DR_001 and dated received 10th July 2014. All fencing shall be erected below the outer most limit of the branch spread or at a distance equal to half the height of the tree, whichever is the furthest from the tree, unless otherwise agreed in writing with the Local Planning Authority.

The protective fencing shall be erected before the works hereby approved 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.

- 11) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of the parking of vehicles of site operatives and visitors, construction vehicles loading/unloading and turning facilities, wheel-washing facilities, details of construction haul routes and construction times. The development shall be carried out in accordance with such details that are approved.
- 12) Details pursuant to Condition 1 shall include the provision of native species in landscaping proposals and native hedgerow species, details of which are to be agreed with the Local Planning Authority. Such details as approved shall be carried out prior to the occupation of any dwelling, and thereafter shall be maintained.
- 13) Prior to the commencement of any development hereby approved, a small woodland management plan, in relation to the land between 'Cliff Paddock' and Plot 2 on the indicative site plan hereby approved, shall be submitted to and agreed in writing by the Local Planning Authority.

The management plan shall accord with the Forestry Commission guidance, available at www.forestry.gov.uk. The measures within the plan shall be carried out as agreed.

- 14) The details submitted pursuant to condition 1 of this permission shall show the retention of the existing hedgerows on the west side of North Foreland Avenue and the west side of Cliff Promenade into the development or alternatively a replacement native hedgerow in the same form, length and alignment as the existing.