



Appeal Decision

Hearing Held on 11 March 2020

Site visit made on 11 March 2020

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 24 April 2020

Appeal Ref: APP/Z2260/W/19/3235926

The Sportsman Inn, 123 Sandwich Road, Ramsgate CT12 5JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Kentish Projects Ltd against the decision of Thanet District Council.
 - The application Ref F/TH/18/1059, dated 24 July 2018, was refused by notice dated 25 June 2019.
 - The development proposed is the redevelopment of the existing public house and garden comprising a mixed development of 9 apartments, offices and commercial unit, with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following determination of the application, the appellants amended their plans with the intent of resolving the issue of highway safety. The revised arrangement is shown on drawings 1714SPAHPL010_P4 and 1714SPAHPL0110b. The Local Highway Authority (LHA) have stated that the revised scheme addresses their concerns with regard to visibility. I consider the amendments are of a minor nature and therefore accept the revised plans on the basis that no party would be prejudiced by my doing so and I will return to this matter later.
3. The site is within the zone of influence of the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar site (SPA) and the Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI). The appellants submitted a Unilateral Undertaking (UU) which sought to provide contributions towards mitigation measures in respect of the SPA.
4. However the Council was not satisfied that this agreement had been completed correctly and would be effective as a planning obligation. This was due to the lack of correlation between the extent of the land outlined red on the plan attached to the UU and the appeal site. Even though additional information relating to land ownership was provided at, and after, the Hearing this matter remains unresolved. In these circumstances I am unable to take the UU into account in reaching my decision when assessing the effect of the scheme on the SPA.

Main Issues

5. The main issues are: -

- The effect of the proposal on the character and appearance of the site and the surrounding area;
- The effect of the proposal on the living conditions of the occupiers of 2 Ash Court, with particular reference to outlook, light, privacy and sense of enclosure;
- Whether or not the site is a suitable location for offices;
- Whether or not the proposal provides acceptable access for all users; and: -
- The effect of the proposal on the Thanet Coast and Sandwich Bay SPA and Ramsar site and the Sandwich Bay and Hacklinge Marshes SSSI.

Reasons

Character and appearance

6. The appeal site lies on Sandwich Road facing the sea across salt marshes. The area within which it lies is predominantly residential, although on the other side of the road there is a petrol filling station and a public car park. The site lies on a prominent corner with views around the bay. Behind the site lies a golf course.
7. The dwellings in the area are of varying design, but are predominantly two storeys in height with pitched, tiled roofs. The existing building is located towards one end of its plot, and the residual space provides a sense of openness on the sea front. Although the building has a commercial use its scale reflects the domestic scale and character of the surrounding area.
8. The proposal seeks to replace the existing public house with two buildings. Proposed Building A would be three storeys in height, with a pitched roof presenting five gables to the road frontage. Building B would provide four floors of accommodation with a flat roof.
9. While the site is largely screened when approaching along Sandwich Road from the south-west by planting, the proposal would be prominent in views when approaching from the north-east and from the wider area around the bay, visually dominating the vicinity. There would be further views from the golf course and nearby roads and dwellings. From these various vantage points the additional height of both the buildings would appear visually intrusive when seen against the surrounding two-storey dwellings. Further, the angular form of Building B, with its flat roof, would appear incongruous alongside the pitched roofs and more traditional designs of the domestic buildings around it.
10. The roof of Building A is more in keeping, in terms of design and materials, with those of the nearby domestic buildings. Nevertheless, in my view, the incongruity in scale, height and roof form is so marked as to constitute significant harm to the character and appearance of the area.
11. The design of Building B seeks to reduce the perception of massing by stepping the penthouse back from the perimeter of the building. The proposed buildings

- would have facades running parallel to Sandwich Road, as opposed to the existing building, which is at a slight angle to it and so would relate better to the principle frontage. Building B is located in the lowest part of the site and the ground levels around it would act to reduce the awareness of the difference in roof levels. However, these measures are not, in themselves, sufficient to reduce the perception of the buildings' heights and massing to mitigate the harm that I have identified or address the incongruous roof form of Building B.
12. The petrol filling station on the opposite side of Sandwich Road has a flat roofed canopy and forecourt. However, that is an open structure and reflects its function as a filling station. It is therefore not a justification for introducing a flat roof on a bulky building immediately opposite.
 13. The site would be landscaped. However, given the constrained space available within the site, there is limited scope for landscaping and its scale would be restricted. I have little evidence to suggest, therefore, that the harm that I have identified could be addressed through landscaping.
 14. I therefore conclude that the development would result in unacceptable harm to the character and appearance of the site and the surrounding area. It would be contrary to the aims of Policy D1 of the Thanet Local Plan -2006- (the Local Plan) which requires development to respect its context and be high quality design that makes a positive contribution in terms of architecture, height and scale. The proposal also fails to accord with the advice of the National Planning Policy Framework -2019- (the Framework) as it would not maintain the area's prevailing character and setting or be sympathetic to local character, including the surrounding built environment.

Living conditions of the occupiers of 2 Ash Court

15. No 2 Ash Court has windows on its flank elevation facing towards the appeal site at both ground and first floor levels. The ground floor window is clear glazed. The rooms appear to serve as a kitchen and a bathroom. To the rear of No 2 is a small conservatory, giving on to its garden. Currently these windows, the conservatory, and the garden have an open aspect towards the sea, giving a sense of spaciousness and light beyond the side boundary.
16. Building B would introduce a new structure very close to the side boundary of No 2 presenting a blank elevation at second and third storeys. The occupiers of No 2 did not attend the Hearing or my site visit. Nevertheless, from their representation and those of their neighbours and elected representatives, I am of the opinion that they would experience a harmful overbearing effect and an increased sense of enclosure due to the height and bulk of the development in close proximity to the house, conservatory and garden.
17. In addition, Building B would be positioned to the south-east of No 2 and its bulk and massing, close to the boundary and four storeys in height would cast shadow over the flank wall for significant periods of the day, resulting in a loss of light within the rooms closest to the boundary between the appeal site and No 2 and in the conservatory.
18. The penthouse flat in Building B would have windows serving a lounge/diner/kitchen area and a bedroom facing towards the flank wall of No 2, together with a balcony outside the lounge/diner/kitchen area. From these windows and parts of the balcony, occupiers of the penthouse flat or their

guests could see down towards the windows in the flank wall of No 2, the conservatory, and the garden behind No 2.

19. The short separation distance from Building B to the side boundary of No 2 and overlooking that would result would intrude significantly upon the privacy of the principal outdoor amenity area, the conservatory and windows on the flank wall of No 2.
20. A privacy screen of suitable design around the balcony area could preclude such intrusive overlooking and this could be secured by a suitable planning condition. However, the obscure glazing in the windows required to address overlooking of No 2 would mean that there would be no views of natural light from this façade. These windows give onto habitable rooms and obscure glazing would create a sense of internal enclosure and oppression for residents of the new apartment and so would be inappropriate.
21. I therefore conclude that the proposal would harm the living conditions of the occupiers of 2 Ash Court, arising from unacceptable loss of outlook, light, privacy and increased sense of enclosure. This would be contrary to the provisions of Policy D1 of the Local Plan which seeks to protect the amenity of occupants of neighbouring buildings. The development would also be contrary to the provisions of the Framework in as much as it would not safeguard safe and healthy living conditions for the neighbouring properties.

Suitable location for offices

22. The appeal proposal would provide approximately 160sqm of office space on the ground floor of Building A. The Framework includes offices in its definition of town centre uses and seeks to protect the vitality of town centres by encouraging the location of such uses in a sequential hierarchy of preference. The Framework also seeks to support a strong, competitive economy taking account of local business needs, including being flexible enough to accommodate needs not anticipated in the plan.
23. The proposal falls short of being what would normally be considered a 'major' development. It would provide a limited amount of office floorspace, suitable for occupation by small businesses. I therefore consider that a rigid approach to applying the sequential test required by the Framework in respect of major schemes is not, in this instance, appropriate or necessary.
24. The main parties agreed at the Hearing that an 'active' use of the ground floor would be preferable in order to achieve a good quality of design. The site is at risk of flooding and, as offices are considered to be a less vulnerable land use where such risk occurs, such a use would be preferable to dwellings in order to provide such an active use. The employees of the offices would provide a degree of support to the adjacent cycling café, or micropub and provide more local employment opportunities. I accept that other potential uses, also classified as being less vulnerable, could occupy the ground floor. For example, at the Hearing it was suggested that a small convenience store would be a suitable use. However, I have little evidence before me to suggest that such other uses would be likely to come forward.
25. The appellants have indicated that two local businesses have expressed interest in the proposal, which suggests that there may be a demand for purpose-built small offices in this location. Whilst the Council's employment

strategy promotes locations in town centres, or existing business parks, there is also some support in the Framework for mixed use development and for economic growth in general, including that outside of identified town centres.

26. I therefore conclude that the proposed development is a suitable location for offices and complies with the provisions of the Framework in as much as it promotes economic development outside of town centres, whilst the scale of development does not require the application of a sequential test.

Highway safety

27. Sandwich Road is, in the vicinity of the appeal site, subject to a 30mph speed limit. Opposite the site runs a designated cycle route, and in close proximity are bus stops.
28. The amended scheme allows the provision of the 43m by 2.4m visibility splays required by the LHA and reconfigured the parking arrangement, resulting in the loss of one space. The LHA confirmed that this addressed its concerns in writing and on this basis the Council withdrew its objection in respect of this matter¹.
29. The amended scheme would provide 26 parking spaces. Notwithstanding the concerns raised by some local residents, the Council and LHA consider this to be an adequate number of spaces and I have no substantive evidence before me to come to a different conclusion.
30. Furthermore, future occupiers and users of the development would have convenient access to the cycleway and bus services passing along Sandwich Road, and cycle parking would be provided within the site. Realistic alternatives to the private car would therefore be available to meet their day-to-day needs for travel.
31. I therefore conclude that the proposed development provides acceptable access for all users. It is therefore in accordance with Policy D1 of the Local Plan, in as much as this policy requires that development must provide safe and satisfactory means of access. The proposal would also accord with paragraph 108 of the Framework which requires that development should ensure that safe and suitable access to the site can be achieved for all users.

Protected habitats

32. The site is located within the Zone of Influence of the Thanet Coast and Sandwich Bay SPA and Ramsar site and the Sandwich Bay and Hacklinge Marshes SSSI. These habitats constitute a European Designated Site (EDS) afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations), protected for their importance to breeding and non-breeding migratory birds including, amongst others, Turnstones and European Golden Plovers, which are ground nesting birds. The Court of Justice of the European Union have ruled that the decision maker, when considering the effect that a proposal may have on an EDS, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage². This responsibility now falls to me within this appeal. Such an assessment is necessary regardless of the status of the policies of the development plan.

¹ email dated 5 December 2019

² People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

33. The location of the proposal, and its nature, would generate an increase in recreational activity associated with the residential part of the development. Further, it is likely that such activity would include accessing the protected habitats, such as for dog walking, which would be likely to affect ground nesting birds.
34. The Protected Sites are used for public recreation and, given the proximity of the site to them the proposed development is likely to generate an increased recreational use and thus, in combination with other development, have a significant effect on the features of interest of them. At the Hearing there was no dispute of this conclusion.
35. Consequently, a Strategic Access Management and Monitoring plan (SAMM) has been prepared in collaboration to Natural England to undertake mitigation measures to protect the habitats. The SAMM sets out a requirement for all residential development to make a financial contribution towards these measures to enable them to be implemented. However, no details of how the money would be used in connection with the appeal proposal was provided. I am therefore unable to assess the effectiveness of the measures or to be certain that they would be delivered in a timely manner. I am therefore unable to complete an AA for this case. Furthermore, as the UU offering a contribution was flawed, there is no mechanism to secure the mitigation measures.
36. Consequently I conclude that the proposal would adversely affect the integrity of Thanet Coast and Sandwich Bay SPA and Ramsar site and the Sandwich Bay and Hacklinge Marshes SSSI. It therefore conflicts with the aims of the Framework to prevent the loss or deterioration of irreplaceable habitats and the provisions of the Habitats Regulations, which seek to ensure the protection of habitats from degradation and damaging activities.

Planning Balance

37. The parties agree that the Council is unable to demonstrate a five year housing land supply. Consequently Paragraph 11 d) of the Framework is triggered and planning permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits of the proposal.
38. The development would provide benefits in terms of delivering an additional nine homes to boost local housing supply. There would be minor benefits to the local economy in terms of short term employment in the construction industry and longer term support to shops and businesses. The proposal would further support the local economy by providing employment within the business use and cycle café/micropub.
39. The proposal would make productive use of a currently dilapidated site replacing the existing building with an active frontage. There would also be a benefit to the local community from the cycle café/micropub, in that it would provide a social venue. These are matters in the proposal's favour to which I attach moderate weight.
40. The proposal would provide suitable access and parking arrangements. However, this is a neutral factor in the balance.
41. Nevertheless, I have found the proposal would harm the character and appearance of the area and the living conditions of the occupiers of 2 Ash

Court. Both individually and collectively these are significant factors weighing against the scheme.

42. I therefore conclude that the adverse impacts would significantly and demonstrably outweigh the limited benefits provided by the scheme when considered against development plan policies and the Framework when read as a whole. Consequently the presumption in favour of sustainable development does not apply in this case.
43. However, even had I come to a different conclusion, I have found that the proposal would adversely affect the integrity of the Thanet Coast and Sandwich Bay SPA and Ramsar site and the Sandwich Bay and Hacklinge Marshes SSSI. Paragraph 177 of the Framework states the presumption in favour of sustainable development does not apply in such cases. Furthermore, Footnote 6 of Paragraph 11 includes specific reference to habitats sites as protected areas of particular importance, and this alone would have provided a clear reason for dismissing the appeal.

Conclusion

44. For the reasons given, I conclude that the proposal conflicts with the development plan and there are no other considerations, including the advice of the Framework, that outweigh that conflict. Therefore the appeal should be dismissed.

I Dyer

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr Alister Hume Hume Planning Consultancy Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Gillian Richardson Senior Planning Officer Thanet District Council

Annabel Hemmings Principal Planning Officer Thanet District Council

INTERESTED PERSONS

Cllr Brenda Rogers Ward Councillor, Thanet District Council

Cllr Mark Rattigan Ward Councillor, Thanet District Council

Mr Brian Hopkins Resident

Mr Michael Skelton Resident

Ms Vera Hovenden Resident

Documents submitted at the Hearing:

45. Strategic Access Management and Monitoring Plan (2016).
46. Thanet Strategic Access Management and Monitoring Plan – Notes to Accompany Tariff for 17,140 Homes (2017)
47. E-mail dated 5 December 2019 from Richard Smith of Kent County Council to Gillian Richardson of Thanet District Council