



Appeal Decision

Site visit made on 9 May 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/Z2260/W/22/3298546

2 Lindenthorpe Road, Broadstairs CT10 1BG

- 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 Mrs Ann Brazil against the decision of Thanet District Council.
 - The application Ref F/TH/21/1523, dated 20 September 2021, was refused by notice dated 18 March 2022.
 - The development proposed is the erection of five detached dwellings [following demolition of existing], creation of vehicle crossings onto Lindenthorpe Road, together with landscaping and all associated engineering operations.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council has cited conflict with Policy SP30 of the Thanet District Council Local Plan (Adopted July 2020) (the LP), in its second reason for refusal, which states that the appeal proposal would harm the character and appearance of the area. However, Policy SP30 relates to biodiversity and not character or appearance. I will return to this matter later in this decision.
3. The appeal site lies within the Zone of Influence (the ZoI) of the Thanet Coast and Sandwich Bay Special Protection Area (the SPA) and Ramsar site, which is protected as a European site of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (as amended). I will return to this matter later in this decision.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area, including its effect on protected trees.

Reasons

Character and appearance, and trees

5. The appeal site is effectively an area of woodland that is situated within a built-up residential area of the town and is occupied by a vacant dwelling that is in a poor condition. A Woodland Tree Preservation Order (TPO) dated 1956, preserves the woodland trees growing on the site. A TPO dated 1984 preserves a single substantial Copper Beech tree positioned towards the rear boundary of the appeal site.

6. The trees growing on the site have a high amenity value as a group. They form an attractive landscaped feature that is highly visible from the surrounding roads and properties, within this generally suburban and built-up part of the town. They provide a landscaped setting and a visual break between the broadly similar style bungalows and semi-detached houses set in tightly spaced rows, fronting Lindenthorpe Road to the east, and the verdant character of the generally substantially sized detached dwellings fronting Bairds Hill and Callis Court Road.
7. Furthermore, those trees growing towards the road frontage of the appeal site, are visible in views from the junction with Bairds Hill and Callis Court Road, where they contribute positively to the character and appearance of the Area of High Townscape Value, which is designated in The Broadstairs and St. Peter's Neighbourhood Development Plan 2018-2031 – Referendum Version (August 2020) (the NP). In these respects, the trees growing on the appeal site contribute positively to the sylvan character and appearance of the area.
8. The appellant's Tree Survey (TS) identifies that trees T1, T7, T21 and T23, which are protected by TPOs, would be removed for arboricultural reasons. I acknowledge the comments of an interested party that tree T1, a Copper Beech, has a healthy crown and with maintenance could have another 200 years lifespan. I have also noted the photograph of tree T23 taken on 24 September 2022, which is stated as showing a full and vigorous crown. However, the Council has not disputed the findings of the TS and I have no substantive technical evidence to the contrary. On the evidence before me and my observations at the site visit, I have no basis to reach a different view and I find there are justified arboricultural reasons for removing these trees, despite their collective amenity value.
9. Trees T14, T17, T18 and T19, would be removed to accommodate the development. Except for tree T19, these trees are classed as Category B or C trees. They are generally located close to the site frontage in the approximate centre of the site. Along with trees T2, T3, T13 and T15, they are highly visible and their amenity value as a group contributes positively to the sylvan character and appearance of the area.
10. There is no evidence before me to suggest that the lifespan of trees T14, T17 and T18, would be compromised were it not for the proposed development. Their removal of these trees would have the effect of significantly diminishing the tree canopy coverage on this prominent part of the site. This would harmfully erode their positive contribution to the sylvan character and appearance of the area in views from the roads and nearby properties.
11. In addition, proposed plot 3 would be situated close to the canopy of a substantial mature Turkey Oak tree (T2) classed as a Category A tree. At a height of some 22 metres, with a height to the crown of some 9 metres, this tree would loom large above proposed plot 3 and is likely to have experienced further growth and spread since the TS was undertaken. Although plot 3 is north facing and marginally offset from the tree's canopy, it features a front balcony and windows serving habitable rooms. There is likely to be pressure for pruning this tree to allow light to reach internal areas of the dwelling and to reduce the amount of leaf litter, and potentially branches, falling on the property.

12. The scale of tree T2 and its proximity to plot 3, is likely to be perceived as a threat to the proposed building in respect of damage. Future occupiers are therefore likely to subject this tree to additional pressure for pruning works or even felling to avoid perceived or actual damage to people and property, and related health and safety concerns. The potential lifespan of this tree exceeds 40 years, and therefore this issue would only become more acute as the tree continues to grow.
13. The TPO affords protection to the retained trees and would enable the Council to control future work to this tree. However, it would likely be difficult for the Council to resist an application to prune or potentially remove a tree that was a threat to the safety of the property or its occupiers, or was harming their enjoyment of their property. I have not seen anything in the evidence that would give certainty that the Council would be able to resist such pressure in the future. Consequently, there is a clear risk that the proposed development would threaten the integrity and long-term future of this mature protected tree and compromise its important contribution to the amenity value of the group of trees, and the character of the area.
14. Semi-mature native oak specimens would be planted to infill gaps in the tree coverage alongside the road frontage. However, I am not persuaded that these trees would reach their full potential, in terms of their visual contribution, for many years. As such, they would not adequately compensate for the loss of the amenity value of the trees that would be removed.
15. Overall, the removal of protected trees T14, T17, T18, and the threat to the integrity and long-term future of protected tree T2, would have an adverse effect on the amenity value of the trees on the site, and their contribution to the character and appearance of the area.
16. An interested party has referred to the numerous smaller trees growing on the site that were not surveyed in the TS. However, compared to the larger trees surveyed in the TS, these trees form a lower layer of vegetation along with other planting on the site. Their removal would not significantly harm the sylvan character and appearance of the area.
17. Aside from the effects on trees, the layout, scale and appearance of the proposed dwellings would be in-keeping with the prevailing townscape in the area. The proposed dwellings would form a satisfactory transition between the relatively tightly spaced rows of similar style bungalows and houses to the east along Lindenthorpe Road, and the generally larger more individualistic dwellings to the west, along Bairds Hill and Callis Court Road.
18. Proposed plot 1 would be set behind and well away from the closest bungalow and its hipped roof slope would ensure a comfortable transition of roof heights in the street scene. Thin profiled railings along the site frontage would allow views of the retained trees and proposed planting. Soft and hard landscaping could be secured by condition. However, taken together, an absence of harm in these respects would not outweigh the harm that I have identified above.
19. Consequently, I conclude that the appeal proposal would harm the character and appearance of the area, contrary to Policies QD02 and SP35 of the LP, and Policies BSP3 and BSP7 of the NP, which together seek to ensure that development respects and enhances the character of the area, retains trees

which contribute positively to the quality and character of an area, and that adverse impacts on protected trees and significant trees will not be supported.

20. Insofar as is relevant to this case, those policies are consistent with the aims of the National Planning Policy Framework (2023) (the Framework) in Paragraphs 130, 131 and 134, which require planning decisions to ensure that developments are well designed and sympathetic to local character, including the surrounding built environment and landscape setting, and opportunities are taken to incorporate trees in developments and retain existing trees where possible. For the reasons given above, the proposal would be contrary to those aims of the Framework.

Other Matters

21. The proposal is likely to have a significant adverse effect on the SPA, through increasing the resident population within the ZoI. Those residents are likely to visit the SPA for recreational purposes, increasing the potential for disturbance of the qualifying bird species within it. The appellant has submitted a signed Unilateral Undertaking to obligate payment to the Council of the requisite tariff-based contribution towards the delivery of the Strategic Access Management and Monitoring Plan to mitigate the potential negative in-combination effects of new housing development on the bird species within the SPA. However, as I am dismissing the appeal for other reasons no harm would be caused to the SPA, and I need not consider this matter any further.
22. The appellant has drawn my attention to the support of several interested parties who consider that the proposal would resolve ongoing problems with vandalism and incidents of anti-social behaviour at the appeal property. Whilst I acknowledge such concerns, I have limited evidence on the frequency of those instances. The appeal development is unlikely to be the only option for resolving these issues, particularly given the development plan's 'in principle' support for developing the site. I therefore give this matter limited weight and it does not outweigh the harm to the character and appearance of the area.

Planning Balance

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. For the reasons given above the appeal proposal would not accord with the development plan when considered as a whole.
24. However, the Framework is a material consideration. It is common ground that the Council cannot currently demonstrate a five-year supply of deliverable housing sites in its area. It has failed the Housing Delivery Test and I have been referred to an appeal decision¹ in which the housing land supply ranged from 4.23 and 4.34 years. The shortfall in housing supply was described as 'notable'.
25. Accordingly, the policies which are most important for determining the application are deemed out-of-date in accordance with Paragraph 11.d) of the Framework. Therefore, in accordance with the Framework, planning permission should be granted, unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

¹ APP/Z2260/W/21/3280446

26. The social and economic benefits of the appeal proposal are that it would make efficient use of land in a settlement where there is a range of services and facilities for residents, and where housing development is permitted, in principle, by Policy HO1 of the LP. The proposed dwellings would provide family housing and generate short term employment opportunities and economic benefits associated with the construction works, and long-term benefits through the new resident households supporting the businesses and services within the economy. Given the relatively small scale of the development, the economic and social benefits that would accrue from it would be modest and together they weigh moderately in its favour.
27. The Council's second reason for refusal cites a conflict with Policy SP30 of the LP, which states that planning permission will not be granted for development if it results in significant harm to biodiversity assets, which cannot be adequately mitigated or as a last resort compensated for. The Council Officer's report states that the appeal proposal conflicts with Paragraph 174 of the Framework. Even if I accept that the proposal would not harm protected species and would enhance biodiversity through the measures in the appellant's enhancement strategy, the extent of the enhancement would be modest given the scale of the development and could only carry modest weight in its favour.
28. Collectively, the modest benefits of the appeal proposal are insufficient to outweigh the appeal proposal's conflict with the development plan policies referred to above and the harms that I have identified.
29. I have taken account of the Framework's objective of boosting housing supply, including through delivering housing on small and medium sized sites within existing settlements, which can be built-out relatively quickly. Although the proposed development would make efficient use of land for housing and make a small contribution to the housing supply in the area, I have already found that the economic, social and environmental benefits attributed to the construction and occupation of the proposed dwellings would be modest.
30. However, I find there would be conflict with the Framework in so far as the appeal proposal would not be well designed and sympathetic to local character, including the landscape setting of the built environment, and it would not take opportunities to retain existing trees.
31. Consequently, the appeal proposal's adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. Therefore, the proposal does not benefit from the presumption in favour of sustainable development under Paragraph 11 of the Framework.

Conclusion

32. For the reasons given above and having considered all matters raised, I conclude that the proposed development conflicts with policies of the development plan. There are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding. The appeal should be dismissed.

G Sylvester

INSPECTOR