



Appeal Decision

Site visit made on 28 February 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2023

Appeal Ref: APP/Z2260/W/21/3283984

Former Laleham Gap School, Margate CT9 2TP

- 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 Alister Fawley of Kent County Council against the decision of Thanet District Council.
 - The application Ref OL/TH/20/1339, dated 28 September 2020, was refused by notice dated 1 April 2021.
 - The development proposed is the construction of 20 dwellings with associated parking, bin/cycle storage and vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with some matters reserved. I have had regard to the submitted plans but have regarded all elements of these drawings as indicative, apart from access.

Main Issue

3. The main issue is the effect of the proposed development on playing field provision.

Reasons

4. The appeal site forms two discrete parcels of overgrown grass land, separated by a public footpath which connects Northdown Park Road with Northdown Road. Although the site is not allocated, the evidence before me nevertheless demonstrates that it was most recently used as land providing playing fields.
5. Policy CM02 of the Thanet District Council Local Plan (LP, 2020) aims to protect existing community facilities, which includes local shops, services and public houses. The redevelopment of such sites is resisted unless there is alternative local provision, or that every reasonable attempt has been made to secure an alternative community use, or that an improved community provision would be provided. However, there is no substantive evidence before me, either within the wording of LP Policy CM02 or elsewhere, which clearly defines playing fields or open space as a community facility. Therefore, I find no direct conflict with this policy.
6. Nevertheless, LP Policy GI05 is clear that built development will not be permitted on playing fields or on land last used as a playing field unless a specified justification applies. The exceptions include a demonstration that

there is an excess of playing field provision in the area, that the proposed development is incapable of forming a pitch, or that the playing fields would be replaced prior to the commencement of the development of at least a similar or improved quality and size in a suitable nearby location. Paragraph 99 of the National Planning Policy Framework (the Framework) sets out a further exception for development which is for alternative sports and recreational provision (which does not form part of the proposal before me).

7. The evidence before me indicates that the appeal site once formed part of a wider site accommodating Laleham School and grounds. That school was relocated to another site previously¹ and planning permission was granted in 2016² for its demolition and the site's redevelopment to provide 70 dwellings. That development has since been implemented.
8. The appellant contends that the land forming the site has not been used since the replacement school was opened. However, there is no substantive evidence before me to demonstrate that there is a lack of demand for that space, or that it is incapable of forming a useable pitch or playing fields, if it were to be made available and maintained.
9. Irrespective of any former connection with the relocated school, there is no dispute that the areas of land subject to this appeal fell outside of that original planning application. The evidence before me provides assurances that a previous application undertaken to dispose of the school and its associated land *did* include the appeal site. This was an application under Section 77 of the School Standards and Framework Act 1998 (as amended). Accordingly, this, together with the reference to the Academies Act 2010 (amended), is an entirely separate process from the assessment of the proposed development before me under planning legislation. Moreover, that Section 77 assessment was carried out in 2015. It therefore predates the Council's Playing Pitch Strategy (PPS) which was completed in 2018 and which does not provide justification for the loss of the playing fields at the appeal site. Accordingly, I cannot rely on that information to demonstrate that a similar or improved quality and size of playing pitch has been provided in respect of this appeal.
10. The PPS sets out an assessment of the supply and demand of facilities for the whole district. It is concluded that there is an existing and forecast shortfall of grass football pitches, specifically for junior 9v9 and 11v11 games. From that perspective, there is a clear deficit of playing field provision. Sport England, who were consulted during the course of the planning application, considers that the appeal site, by reason of its size, is capable of accommodating two 5v5 football pitches. Sport England identifies that a financial contribution of £50,000 would provide adequate mitigation for the loss of playing fields on this basis. This is based on the cost of providing one U7/8 mini football natural turf pitch being £25,000. The equivalent of two such pitches would therefore require a contribution of £50,000.
11. Whilst the thrust of the appellant's argument is based on a contended previous re-provision of playing fields at the new school site, a signed, dated and witnessed Unilateral Undertaking (UU) has also been provided to secure the payment of £50,000, calculated by Sport England. Whilst I acknowledge that this could provide alternative off-site opportunities, the UU does not indicate

¹ Ozengell Place, Newington

² F/TH/14/0518

precisely where and when these contributions should be invested. Furthermore, it is set out that it would be spent by Sport England, but the payment is secured to the Council. Consequently, there is no certainty that the proposed financial contributions could reasonably be translated into physical measures within an appropriate timescale.

12. For the reasons given above, I conclude that the proposed development would result in the loss of playing fields which would not make a suitable re-provision. The proposed development is therefore contrary to the relevant provisions of LP Policy GI05 which, taken as a whole, seeks to protect playing fields. This is in a similar vein to the provisions of paragraphs 98 and 99 of the Framework which aim to improve access to opportunities for sport and physical activity, which is important for the health and well-being of communities.

Other Matters

13. The appellant has submitted a signed, dated and witnessed Unilateral Undertaking to secure an affordable housing offer and a series of other planning obligations. Some are to make the development acceptable and others can be considered benefits of the scheme.
14. I acknowledge that the proposed development would make a contribution to housing land supply and delivery in the area, including the provision of affordable housing on-site. The delivery and transfer of the affordable units, as set out within the UU, would be relatively late when compared with the occupation of the market units. Nevertheless, the UU would secure provision in accordance with policy. This is a moderate benefit weighing in favour of the appeal proposal, irrespective of the housing land supply and delivery position. Given my reasoning in respect of the main issues and that the appeal is dismissed, there is no requirement upon me to consider the remainder of the proposed planning obligations any further.
15. There would also be other benefits to the scheme. There would be economic benefits arising from the construction of the development and from future occupiers using the local services in Margate. I give these economic benefits moderate weight.
16. That the council raises no objection to the number, illustrative design, density or mix of dwellings provided, and that the proposed development would accord with other planning policy objectives, including highways matters, is noted. However, a lack of objection to these matters is not reason to automatically allow development that is contrary to other policy requirements. I therefore give minimal weight to these considerations.
17. I also note the appellant's comments relating to the benefit of increased natural surveillance along the existing right of way as a result of the proposed development. However, the proposal is in outline and I have no substantive evidence before me of the precise location of the proposed dwellings or the position of windows or associated landscaping that would demonstrate an improvement to natural surveillance. I therefore give this consideration limited weight.
18. The appeal site falls within the 'Zone of Influence' of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest (SSSI). The Council has identified

that the proposed development has the potential to have an adverse effect on the ecological integrity of this protected site. Regulation 63 of the Conservation of Habitats and Species Regulations 2017 states that a competent authority, before giving permission, must make an appropriate assessment. I also note the financial contributions set out in the submitted UU in respect of mitigation measures. Given my reasoning in respect of the main issues and that the appeal is dismissed, there is no requirement upon me to consider such matters any further.

Planning Balance and Conclusion

19. The proposed development would result in some benefits, including the provision of market housing and affordable housing. There, too, would be economic benefits through employment and an increase in local spending.
20. However, the identified benefits, both individually and cumulatively, would inevitably be reasonably limited due to the scale and nature of the development. Accordingly, and given the significant harm I have identified under the main issue, the adverse effects of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the development plan as a whole.
21. For the reasons given above, and taking account of all material planning considerations, I conclude that the appeal should be dismissed.

A Price

INSPECTOR