



Appeal Decision

Site visit made on 29 August 2023

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th October 2023

Appeal Ref: APP/K2230/W/22/3313228

Cobham Lodge, Valley Drive, Gravesend, Kent DA12 5UE

- 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 Dwight Breley, Breley Design Ltd against the decision of Gravesend Borough Council.
 - The application Ref 20220839, dated 27 July 2022, was refused by notice dated 25 November 2022.
 - The development proposed is described as proposed conversion of existing house to 10No. Flats including side and rear extension and loft conversion. Conversion of rear annex building to 2No. Dwelling houses including proposed new dormers. Construction of new apartment building to form 11No. new apartments. Construction of 8No. Semi-detached and 1 No Detached Houses and associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name provided on the planning application form included a typing error. For this reason I have taken the appellant's name from the appeal form for the purposes of this appeal.
3. An area towards the rear of the site is located within the Green Belt. Paragraph 149 of the National Planning Policy Framework (2023) (the Framework) indicates that, other than in connection with a small number of exceptions, the construction of new buildings should be regarded as inappropriate in the Green Belt. One of the exceptions to this is limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, subject to the proposal not having a greater impact on the openness of the Green Belt than the existing development.
4. The main parties are in agreement that part of the proposal is located in the Green Belt, namely the conversion of a large detached annexe into two residential units and would not be inappropriate development in the Green Belt. This would involve a small increase in the height of the building, but no increase to the size of its footprint. The main parties agree that the proposal meets the terms of the most relevant exception to inappropriate development within the Green Belt. Based on the submitted evidence I have no reason to disagree with this conclusion and I shall make no further reference to this matter.
5. An application for costs was made by Dwight Breley, Breley Design Ltd against the Council. This application is the subject of a separate decision.

Main Issue

6. The main issues are:

- whether the proposal is acceptable in relation to prevailing requirements concerning provision of affordable housing and mitigation towards the effects on local services and infrastructure; and
- the effect of the proposal on the character and appearance of the area.

Reasons

Affordable housing and effects on local services and infrastructure

7. The Council has advised that financial contributions are required towards the provision of health, public open space, community and child and adult educational facilities. These would be needed to provide sufficient capacity to meet the demand on the services and facilities from the additional population that would result from the proposal.
8. Policy CS10 of the Gravesham Local Plan Core Strategy (2014) (CS) indicates that where development leads to the need for new or improved physical or social infrastructure, developers will be required to provide or contribute towards this.
9. The sum in respect of education is undisputed and based on a significant deficit of secondary school provision in Gravesham. The terms relating to leisure services, healthcare, adult education, libraries, youth services and social services are all undisputed and relate to site specific schemes. The financial contributions are necessary, directly related to the development and reasonable in scale and kind to the development.
10. Although the appellant has confirmed a willingness to provide these contributions, I have not been provided with a planning obligation. The effect of the absence of such a completed agreement is that contributions towards new or improved physical or social infrastructure would not be secured if planning permission were to be granted.
11. Policy CS16 of the CS requires the amount of affordable housing to be provided by private housing development sites to be 30%. Where it is considered that the delivery of affordable housing in accordance with the policy is not viable, this must be demonstrated through a financial appraisal. The appellant has submitted an Affordable Housing Statement which concludes that, based on market conditions, there would not be sufficient scope for a policy compliant affordable housing provision. The Council do not dispute this conclusion and based on the evidence before me I am satisfied that the provision of affordable housing as required by Policy CS16 would not be viable and on this basis I have found no conflict in this regard.
12. The Council's Officer Report indicates that the appellant has agreed to undertake a viability review of the scheme upon completion of the development or substantial implementation. However, there is no mention of requirements for a review mechanism within Policy CS16 or its supporting text.
13. Planning Practice Guidance (PPG) points out that plans should set out circumstances where review mechanisms may be appropriate, as well as clear process and terms of engagement regarding how and when viability will be

reassessed over the lifetime of the development to ensure policy compliance and optimal public benefits through economic cycles. Policy CS16 does not do this.

14. There would not therefore be conflict with Policy CS16. Accordingly, a Section 106 obligation to provide a review mechanism is not necessary to make the development acceptable in planning terms and has no bearing on my decision.
15. However, in the absence of a completed Section 106 agreement, I have no mechanism to secure any contributions or any other mitigation towards the effects on local services and infrastructure. Consequently, as a result of the development proposed, there would be a harmful effect on the provision of these facilities. Therefore, the proposal would be in conflict with Policy CS10 of the CS, the aims of which are described above.

Character and appearance

16. The appeal site contains a large, detached two storey house set within a substantial plot. It is set back from the highway behind a large crescent shaped driveway and parking area. The appeal property has an unusually large rear garden which extends beyond the gardens of the neighbouring property to the north, 'Alva House'. Due to the dense boundary screening and the size and positioning of the appeal dwelling and Alva House, the garden is largely hidden in views from Valley Drive. A large area of hardstanding and a large two storey detached residential annexe is located at the rear of the site.
17. Alva House is a two storey mixed use commercial and residential building which has been extended within the roof to create a three-storey aspect from the rear. Other than this, the surrounding area is residential in character and properties to the north of Valley Drive are also large, detached two story houses, generally within large plots, and set back from the road behind generous driveways and parking areas. There is a variation in the use of external materials, window design and roof forms between the properties.
18. To the south of the site the pattern of development is markedly different. The adjoining residential property, 'The Ridges' is also a large, detached property. However, its rear garden is significantly truncated in comparison to the appeal site and other properties on Valley Drive. Immediately to the rear of The Ridges is a modest detached house within a smaller plot, and beyond this is a residential cul-de-sac of eight detached dwellings known as Sheldon Heights. This cul-de-sac is accessed from a narrow private road, which also has a distinctly different character to Valley Drive, and is defined by smaller detached dwellings within modest plots.
19. As a result, the appeal site is located in an area of transition where there is a variation in the size of plot and garden areas between the larger properties to the north, and the smaller scale properties at Sheldon Heights and beyond. Variety and difference do not necessarily lead to harm. Whilst the gardens and plots of buildings C1-C9 and B1 and B2 may be slightly smaller than some nearby properties they would not appear manifestly at odds with the prevailing form of development and would not create an awkward juxtaposition within the wider street scene. Equally, the spacing between properties within the proposal, and to adjoining existing properties, would not appear harmfully tight or cramped and a generous proportion of the site would be retained for private and shared amenity spaces.

20. The proposed houses would be a mix of detached and semi-detached two storey properties. Buildings C1-C4 and C9 would have front and rear dormers, which would be proportionate to their roof forms, symmetrically positioned, and would reflect the front dormers at a number of properties within Sheldon Heights.
21. Overall, the new houses would not appear bulky or overly tall in comparison to neighbouring properties. Furthermore, the proposed houses would have a traditional design with pitched roofs, and they would be constructed using a mixture of traditional materials. Consequently, I find that the new dwellings would be finished in a style that would complement the existing housing nearby and which would ensure that the proposal would not be out of keeping with the residential character of the area.
22. The existing house at the site, 'Building A' would be converted to flats through alterations including side extensions and the introduction of dormer windows. 'Building D' would be a new three storey block of flats with dormer windows providing accommodation across four floors. The design of the building would reflect the built form of Building A, in terms of its roofscape and dormer window design. The proposed external materials and fenestration, would be consistent with, and therefore reinforce, the character and appearance of the area.
23. Building D would be located to the rear of Alva House, within an area where the site's levels are lower. This change in site levels, in combination with the width and height of Alva house, and the tall, dense vegetation on its rear boundary would provide ample screening of Building D from views within the public domain on Valley Drive. Whilst parts of the building's roof would be visible in these views, given its significant setback from the site's front boundary it would not be a prominent addition and would not have a harmful impact on the street scene. The building would have inset balconies, the majority of which would face the rear of the appeal site. There would be a small number of balconies facing Valley Drive, at ground, first and second floor level which would be screened from view by Alva House and the boundary vegetation. They would therefore not be viewed as uncharacteristic features.
24. The arrangement of the detached and semi-detached houses and Building D would be perpendicular to Valley Drive. This follows the layout of houses immediately to the south of the appeal site, and as a result, would not be at odds to the prevailing pattern of development.
25. Whilst there may be lower density housing on Valley Drive to the north of the site, I find that the density of the houses within the appeal site would not appear harmfully greater than the density of the dwellings within Sheldon Heights and further to the south. I have found that Block D would have very limited visibility from the public domain, and would not have a harmful impact on the appearance of the area.
26. The submitted drawings demonstrate that the separation to the boundaries would enable sufficient space for soft landscaping. Overall, given the mixed grain of the properties within the surrounding area, the proposed dwellings would have a sufficiently sympathetic visual relationship with their surroundings. Accordingly, the proposal's greater density would not be at odds to the character of the area.

27. The proposal therefore, would not have a harmful impact on the character and appearance of the area. It would accord with Policy CS19 of the CS which, amongst other things, requires development proposals to be visually attractive, fit for purpose and locally distinctive. The proposal would also accord with the principles of the Framework which require developments to be visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Other Matters

28. The appeal site falls within the 6km protection zone of the Thames Estuary and Marshes SPA/RAMSAR. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations').
29. The Council has advised that the proposal may adversely impact the SPA/RAMSAR due to the net increase in residential units on the site. To avoid any adverse impact, the Council's adopted North Kent Strategic Access Management and Monitoring Scheme (SAMMS) sets out a tariff-based approach to mitigate the impact of recreational disturbance on the SPA/RAMSAR.
30. Had I found the proposal to be otherwise acceptable, the Habitats Regulations impose a duty to consider within the framework of an Appropriate Assessment whether it would have a significant effect on the conservation objectives of the SPA/RAMSAR either alone, or in combination with other plans and projects. As part of this, I would need to consider the likely effectiveness of mitigation proposed. However, even though the appellant has indicated a willingness to enter into an agreement to address any mitigation required to address concerns related to the SPA/RAMSAR I have no such agreement before me. In any event, given the harm that I have identified above and that I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter further as it would not alter my findings on the main issues.
31. A significant number of interested parties have raised other concerns in relation to the development, such as in relation to its effect on parking, highway safety and the impact on neighbouring occupiers. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.
32. Whilst not referred to in any reason for refusal, the Council indicate that units A.1, A.4, A.5 and A.8 would be undersized when measured against the Nationally Described Space Standards (NDSS). The Government's PPG states that, 'where a local planning authority (or qualifying body) wishes to require an internal space standard, they should only do so by reference in their Local Plan to the NDSS'¹. As the Council has not yet incorporated the NDSS into a Local Plan, or other policy, they can only be considered as guidance and any conflict cannot attract significant weight.
33. In any event, whilst the units would fall short of the internal floor area set by the NDSS, the individual room sizes, as well as the provision of storage accord with the NDSS. Overall, the units would provide a reasonable standard of accommodation for future occupiers.

¹ Reference ID: 56-018-20150327

34. That the Council's case differs from the Officer Report to the Planning Committee simply reflects that the Council refused the application.
35. I understand that the appellant undertook lengthy pre-application discussions with the Council in advance of the submission of the planning application. However, the concerns expressed regarding the Council's conduct during the processing of the planning application are the subject of a separate costs decision and are outside the remit of this appeal.

Planning Balance and Conclusion

36. The appellant and the Council are in agreement that the Council cannot demonstrate a 5-year housing land supply. The appellant indicates that Gravesham Borough Council's Five Year Housing Land Supply Statement (2020-25) (January 2021) confirms that the Council have a 3.27 year housing land supply. The Council do not dispute this.
37. In this scenario, footnote 8 of paragraph 11(d) of the Framework confirms that insufficient housing supply dictates that planning permission should be granted unless, as per paragraph 11(d)(i); the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
38. As the proposal the proposal may adversely impact the SPA/RAMSAR without the provision of appropriate mitigation, the application of policies in the Framework that protect areas or assets of particular importance, as given in footnote 7 of paragraph 11(d)(i), provide a clear reason for refusing the development proposed. As a consequence paragraph 11(d)(ii) is not applied.
39. The proposal would also be located where it would be accessible to local services, facilities and public transport. The proposal would contribute to local housing supply and would represent a more efficient use of previously developed land. It would also provide a mixture of unit sizes, including family size units, which would be suitable for a range of households. The appellant also indicates that the proposal would provide net gains in biodiversity. These matters weigh moderately in favour of the development.
40. There would be economic benefits during construction, and through employment, and the spending of the future occupiers and the receipts that the Council would receive. The proposal would provide for recycling and it is intended that energy-efficient and sustainable new homes built to the latest Building Regulations would be constructed, as well as that high quality accommodation would be provided for its residents. The proposal also includes communal open space areas for future occupiers. These matters weigh in favour of the development.
41. Thirty one additional residential units (in net terms), would make an important contribution to addressing the shortfall against the 5 year supply of deliverable housing sites. The proposal would include a mix of housing, including family units. I recognise that the windfall development would incorporate high-quality building fabric and insulation levels alongside renewable technologies. When this is considered with the other benefits, they attract significant weight in my decision.

42. I acknowledge that residential development in this general location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan, for instance I have found that the development would not harm the character and appearance of the area. However, the absence of harm or conflict with other relevant development plan policies is a neutral factor and does not weigh in favour of the proposal.
43. In relation to the adverse impacts, these concern the additional demand on the services and facilities from the additional population that would result from the proposal. The effect of the absence of a completed s106 agreement is that contributions towards new or improved physical or social infrastructure would not be secured if planning permission were to be granted. I find this harm, when taken together, to be very significant.
44. However, in my view, even if I were to conclude there is a shortfall in the five year housing land supply on the scale suggested by the appellant, the adverse impacts of granting permission, such as the impacts on the physical or social infrastructure in the absence of a completed agreement to secure financial contributions would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
45. The harm that I have found leads me to conclude that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, to indicate that the appeal should be determined otherwise. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR



Costs Decision

Site visit made on 29 August 2023

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24th October 2023

Costs application in relation to Appeal Ref: APP/K2230/W/22/3313228 Cobham Lodge, Valley Drive, Gravesend, Kent DA12 5UE

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Dwight Breley, Breley Design Ltd for a full award of costs against Gravesham Borough Council.
 - The appeal was against the refusal of planning permission for proposed conversion of existing house to 10No. Flats including side and rear extension and loft conversion. Conversion of rear annex building to 2No. Dwelling houses including proposed new dormers. Construction of new apartment building to form 11No. new apartments. Construction of 8No. Semi-detached and 1 No Detached Houses and associated development.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Policy Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application contends that despite the applicant's extensive and collaborative engagement with officers, the Council's Committee went against the Planning Officer's report and recommendation that the application be approved. The applicant contends that the refusal of the application constitutes unreasonable behaviour as it prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, the applicant states that the Committee's reasoning is vague, generalised and based on inaccurate assertions about the proposal's impact.
4. The PPG indicates that local planning authorities will be at risk of an award of costs being made against them if they fail to produce evidence to substantiate each reason for refusal. In this case, I have noted the recommendation of the Council's Officers. However, the decision is one which is a matter of judgement. The Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view.
5. Following the Committee's resolution to refuse the planning application, the Council issued its Decision Notice. That sets out the reason for refusal, which is complete, precise, specific and relevant to the development proposed, and details the alleged harm and relevant local and national planning policies that

Members allege the proposal conflicts with. Although putting forward a contrary case to the Committee Report, the Council's appeal statement subsequently elaborates on the refusal reason, the Council's concerns with the appeal proposal and includes reasons why Members went against the recommendation of Officers. Sufficient detail was therefore provided to substantiate its position.

6. Although I have come to a different overall conclusion in relation to the proposal's effect on the character and appearance of the area, this does not mean that the Council acted unreasonably in refusing the planning application. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

B Pattison

INSPECTOR

Richborough

Richborough