

Appeal Decision

Site visit made on 19 September 2024

by D R McCreery MA BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/K2230/W/24/3340732

Manor Hotel, Hever Court Road, Kent, Gravesend DA12 5UQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Best Western Manor Hotel against the decision of Gravesham Borough Council.
 - The application Ref is 20230757.
 - The development proposed is redevelopment of the site for a residential development comprising 12 new houses with associated access, private amenity space, vehicle parking provision, refuse and cycle storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Applications for planning permission must be determined in accordance with the development plan for the area unless material considerations indicate otherwise. In this case, the development plan policies of central relevance are in the Gravesham Local Plan Core Strategy (LPCS). The National Planning Policy Framework (the Framework) is a material consideration.
3. The Proposed Development is located within the zone of influence of the Thames Estuary and Marshes Special Protection Area and Ramsar Site (SPA/Ramsar). As I intend to dismiss the appeal there is no requirement to carry out appropriate assessment of potential effects. It is not necessary for me to address the issues raised in the Council's fifth reason for refusal as a main issue and consideration of the Appellant's draft unilateral undertaking serves no purpose.
4. In any event, as set out in the Planning Inspectorate's Appeal Procedure Guide¹, an Appellant must ensure that an appeal is accompanied by an executed and certified copy of a planning obligation at the time of making the appeal.

¹¹ [Dated September 2024 \(see paragraph 18.2.2\)](#)

5. There is no duty on an Inspector to give a 'minded to' instruction to allow parties to finalise a draft obligation, indeed doing so risks delaying the appeal process. In the absence of evidence of exceptional circumstances, had it been relevant, I would not have taken the draft unilateral undertaking into account.

Main Issues

6. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- whether it would create acceptable living conditions, including in relation to noise and size of outdoor amenity space, and therefore be located, designed, and constructed to safeguard the amenity of its occupants.

Reasons

Character and appearance

7. This roughly rectangular and flat site between the A2 and Hever Court Road primarily comprises a car park linked to the adjacent hotel. Its existing character is defined by its openness, surfaced hardstanding and boundary treatment that includes timber fencing on the side with the A2 and more natural features on other boundaries. Immediately beyond the site, land uses influencing the character include hotel and residential, with buildings mostly of 20th century origin, creating a mixed character with a lack of visual unity in built form. Although not visible from the site, the A2 is clearly audible and is a defining characteristic of the immediate area.
8. The mixed character with a lack of visual unity in built form in the surroundings results in an absence of defining style and configuration of residential development (including no strong visual presence of private car parking contributing positively to the character of the area). The Council's view that the proposal would be out of character, based on it failing to follow what already exists, is unjustified. Without elaboration, I am unclear what the existing streetscape is that the Council think the proposal should be designed to reflect. Their concerns in this regard lack substantiation.
9. For similar reasons, I find the Council's concerns about the contemporary detailed design of the dwellings to be baseless. The need to incorporate unspecified features from surrounding dwellings or the hotel lacks adequate justification for being necessary or, in the case of replicating features from the hotel, desirable design constraints.

10. When viewed on its own merits, the layout would create a development with two block frontages set back from Hever Court Road behind a landscaped barrier and car parking. The third block would have a largely blank side elevation facing the road. Although the resulting fairly low level of street activation would be undesirable, the functional and visual barrier between the dwellings and Hever Court Road would create more comfortable living conditions for occupants than a development designed to be more integrated with the road. Weighing this matter up, this aspect of the scheme is acceptable.
11. The Appellant's design and access statement offers a credible description of how the scheme makes best use of the land available, including addressing the narrowing of the site on one side, and the logic of breaking the massing of the housing into three blocks. The extent of road access appears minimal, and the parking is broken up to reduce the risk of creating a car dominated environment while also meeting the Council's parking requirements.
12. Overall, I do not agree with the Council's assessment that the layout would be unacceptable, nor that the resulting development would be cramped or car dominated. In the case of the latter, this would be subject to conditions securing a detailed scheme of landscaping to soften the boundary with Hever Court Road and approval of details of road surfacing to ensure a quality finish.
13. In conclusion on this main issue, the proposal would not have a harmful effect on the character and appearance of the area. It would accord with the development plan, specifically Policies CS15 and CS19 of the LPCS which includes requiring density that is consistent with the principles of good design and not compromising existing distinctive character and development and design principles aimed at securing new development that is visually attractive, fit for purpose, and locally distinctive.
14. Although it is referred to in their reason for refusal, the Council have not demonstrated the relevance or conflict with Policy CS14 on housing type and size.

Living conditions – amenity of occupants

Noise

15. There is no dispute between the Appellant and the Council that the Appellant's noise assessment (the Assessment) is a credible basis for considering whether the proposed development would create acceptable living conditions for future occupants when the need to manage noise impacts arising from the location of the site between the A2 and Hever Court Road is considered.

16. The evidence indicates that windows would need to be closed for acceptable standards of internal noise comfort to be achievable. A strategy for managing this issue in ventilation terms may well be possible. However, this overlooks the more fundamental question of whether, all things considered, the need to keep windows closed would make for a healthy and comfortable standard of accommodation that would be expected of a well designed proposal.
17. It is reasonable that future residents of the development would expect to open some of their windows, particularly in fine weather. Forcing future residents to make a choice between opening windows and tolerating road noise at the levels identified in the Assessment would create an oppressive living environment, inconsistent with the principles of good design.
18. The Council's suggested condition requiring an updated noise impact assessment to include more details of the extent of reliance on closed windows to meet an acceptable standard of internal comfort is ineffective. Considering the location of the site, the detail of how noise will be managed is fundamental to the acceptability of the principle of development. As such, managing the issue using conditions would not be appropriate.
19. I note that the Council's Environmental Protection team comment on a ventilating solution and have paid regard to the views. However, their remit is narrower than the rounded planning judgment on whether future living conditions for occupants of the dwellings would be acceptable when all things are considered. As such, the comments do not of themselves direct a particular outcome.
20. In relation to garden spaces, the noise levels will exceed the relevant standard. Although usable for functional matters such as storage and drying clothes, and gardens are by their nature more transient spaces, the noise environment created would be inadequate for more extensive leisurely use, limiting their utility. The proposed 'winter gardens' would provide some usable amenity space, albeit small and of a different character to an outdoor space. As such, the winter gardens offer some mitigation for the limitations of the outside space.
21. I have paid regard to paragraph 7.7.3.2 of BS 8233:2014 (Design Criteria for External Noise) and where it may be appropriate to achieve a compromise between elevated noise levels and other factors. In this case, the site is not in a city centre location where access to related amenities might be relevant. Considering the Council's housing land supply position there may be an argument that compromise could be necessary to ensure development needs can be met.

22. However, the paragraph of the BS is also clear that such compromise should be on the basis that development should be designed to achieve the lowest practicable levels. In this case, the Assessment clearly includes measures that could be explored to acquire a more comfortable acoustic environment for future occupants, including relating to changes to the perimeter fence and location of gardens. The evidence as currently presented does not allow me to comment on the likely effectiveness of such measures and my role is to consider the appeal in front of me. However, whether the proposal has been designed to achieve the lowest practicable levels is not demonstrated. As such, the Appellant's reliance on paragraph 7.7.3.2 as justification is misplaced.

Private amenity space size

23. Despite not being acknowledged in the Council's Officer Report, each of the dwellings would include private garden space. The figures for private amenity provision set out in the Appellant's Statement of Case are not disputed by the Council and do not include what is referred to as a 'winter garden'. Paying regard to the standards in the Council's Residential Layout Guidance SPD, two of the two-bedroom properties fall marginally short of the Council's 30 square metre standard and two of the three-bedroom units fall somewhat short of the 60 metre standard. In all cases where there is a deficit, inclusion of the 9 square metre winter garden space would result in accordance/exceedance with the relevant SPD standard.

24. Weighing this matter up, notwithstanding a degree of technical conflict with the SPD, taken in isolation the size of the private amenity space is acceptable. However, this must be considered as part of taking a rounded view on weather living conditions of future occupants would be acceptable.

Living conditions – conclusion

25. Taking a holistic view of living conditions, the proposal would offer dwellings with noisy private gardens and windows that could not be used as a primary source of ventilation without exposing occupants to uncomfortable acoustic conditions. The size of some of the gardens falls below the standards in the SPD, which is mitigated by the winter gardens, although these are functionally different spaces to outdoor amenity areas.

26. On the plus side, the overall size of the dwellings would exceed the National Space Standard in all cases, although not significantly. The proposal is also acceptable when regard is paid to standards of light, accessibility, and privacy, subject to conditions aimed at securing acceptable privacy buffers for ground floor windows.

27. Weighing these matters up, other aspects of the proposal would not mitigate for or assist with managing what is not demonstrated to be an acceptable living situation when regard is paid to noise. As such, acceptable living conditions for future occupants would not result.
28. In conclusion on this main issue, the proposal would not create acceptable living conditions, including in relation to noise. It would not accord with the development plan for the area, specifically Policy CS19 of the LPCS which includes the requirement for development to be located, designed, and constructed to safeguard the amenity of its occupants.

Conclusion

29. The proposal would not create acceptable living conditions, including in relation to noise and therefore would not be located, designed, and constructed to safeguard the amenity of its occupants. There is conflict with policies in the development plan that flows from this harm that, in light of the severity, I regard as conflict with the development plan taken as a whole.
30. The present housing land supply and delivery position puts the Council in the position of accepting that the tilted balance in the Framework is engaged.
31. For the avoidance of doubt, in my overview of benefits and harms below I use the rising scale of limited, moderate, significant and substantial. As SPA/Ramsar issues have a reasonable prospect of being resolved through obligation, I have not included any related harm in my balancing exercise.

Benefits

32. The proposal would deliver 12 dwellings on previously developed land in a reasonably accessible location, built to modern standards, with associated social benefits linked to their occupation. This would support the Government's objectives of significantly boosting the supply of homes (Paragraph 60, Framework) and making effective use of land (Paragraph 123, Framework). Although it is a relatively small development, its contribution would be meaningful against the backdrop of a poor housing land supply position and considering the important contribution that small and medium sized sites can make to meeting the housing requirement of an area (Paragraph 70, Framework). Significant weight is given.
33. Economic benefits linked to construction and spend in the local economy are generalised, unevidenced, and hard to attribute to a development of this scale. This attracts no more than moderate weight. The size of the site is such that there is potential for biodiversity and other environmental enhancement. This could be

secured by condition. It attracts limited weight as the question of whether such enhancements would mitigate for adverse effects (rather than representing a benefit) is not consistently evidenced.

34. In the absence of more detailed substantiated evidence, any benefits relating to securing the longer term viability of the hotel use attract limited weight.

Harms

35. The proposal would not create acceptable living conditions for future occupants. The Framework is clear that planning decisions should ensure that developments create places which promote health and well-being, with a high standard of amenity for future users (Paragraph 135, Framework).
36. Although it would meet the need for new homes and promote the effective use of land, I have significant concerns that the proposal would not ensure safe and healthy living conditions. As such, the balance encouraged in Paragraph 123, Framework would not be appropriately struck. This harm attracts substantial weight.
37. At a very high level, the objective of sustainable development can be summarised as meeting the needs of the present without compromising the ability of future generations to meet their own needs. This proposal would not meet the needs of the future occupiers because it would demonstrably fail to provide acceptable living conditions. The effects could harm both health and well-being, and my overall conclusions on future living conditions is such that the benefits of housing, while attracting significant weight in isolation, become much reduced as a consequence.
38. As such, the adverse effects of granting planning permission substantially and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The presumption at Paragraph 11, Framework is not a material consideration in this case.
39. There are no other material considerations indicating to me that a decision should be taken other than in accordance with the development plan.
40. As such, and paying regard to all other matters raised, the appeal is dismissed.

D R McCreery

INSPECTOR