



# Appeal Decision

Site visit made on 30 January 2024

by **E Grierson BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

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**Appeal Ref: APP/L2250/W/23/3319759**

**St. Margarets Nursing Home, 20 Twiss Avenue, Hythe, Kent CT21 5NU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr & Mrs J Thind against Folkestone and Hythe District Council.
  - The application Ref 22/02494/FH, is dated 22 March 2022.
  - The development proposed is the redevelopment of St Margaret's Nursing Home to provide 14 apartments (10 x 2 beds and 4 x 1 beds) together with associated parking and landscaping.
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## Decision

1. The appeal is dismissed and planning permission for the redevelopment of St Margaret's Nursing Home to provide 14 apartments (10 x 2 beds and 4 x 1 beds) together with associated parking and landscaping is refused.

## Preliminary Matter

2. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023, which I have had regard to as a material consideration in my decision making. In this instance, the issues most relevant to the appeal remain unaffected by the revisions to the Framework. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by such a course of action.

## Main Issues

3. A formal decision was not issued and the Council have not provided any information as part of this appeal as to whether it would have granted or refused planning permission for the proposed development. However, the Council's initial comments on the application and a pre-application response, submitted by the appellant, indicate that their main concerns relate to the impact on the character and appearance of the area and the Conservation Area in which it is located, the impact on the living conditions of the occupiers of neighbouring dwellings and highway safety.
4. Therefore, the main issues in the appeal are the effect of the proposed development on:
  - the character and appearance of the host building and surrounding area and whether it would preserve or enhance the character or appearance of the Hythe Conservation Area;

- the living conditions of the occupiers of the neighbouring dwellings in relation to privacy, outlook and daylight; and
- highway safety in relation to car parking provision.

## **Reasons**

### *Character and Appearance*

5. The appeal site is occupied by a two-storey building, currently used as a residential care home. The appeal building sits at the end of a row of traditionally styled two-storey dwellings on Twiss Avenue. Although it has a larger footprint than the neighbouring properties, the building assimilates well into this pleasant residential road with its green surrounds and location adjacent to the Royal Military Canal. The appeal site is also located within the Hythe Conservation Area, a designated heritage asset.
6. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. Limited information has been provided, however from my observations on site and the heritage impact assessment provided by the appellant, it would appear that the significance of the Conservation Area relates to the historic nature of the area and the traditional buildings within it. Although relatively unremarkable in design, the appeal property appears as part of the modest, traditional residential dwellings on Twiss Avenue within this domestic section of the Conservation Area, which as a whole makes a positive contribution to the significance of the Conservation Area.
7. Whilst it has three-storeys, the height of the proposed development would not be greater than the ridge height of the existing building. However, it would have a greater footprint than the existing building and a significantly larger volume and massing to the rear of the site. It is noted that the stepped design and use of a variety of materials is intended to break up the overall scale of the building, but this is not sufficient to negate the visual impact of a much larger building in this location when compared to the modestly scaled residential dwellings adjacent. Although set back and clad in black tiles, the box like appearance of the second floor further adds to the overall bulk of the building.
8. The simple contemporary design would not be out of keeping with other development in the Conservation Area, where there are numerous examples of similarly styled buildings. Furthermore, the appearance of a more traditional two-storey section fronting Twiss Avenue would complement adjacent properties. However, the massing of the block to the rear would still be highly visible from the public realm and would visually overpower other dwellings in this location. As such, the proposed scale, in this residential street would appear as an overly prominent and incongruous addition to the area, to the detriment of the character and the appearance of the Conservation Area.
9. It is noted that the proposed building would be smaller in scale than the neighbouring supermarket building. However, the supermarket is not located on Twiss Avenue and, unlike the appeal site, does not form part of the residential setting in this area. Similarly, although in a central location, the appeal site is separated from the main town centre where a higher density and larger buildings may be more commonplace.

10. The appeal site also faces the Royal Military Canal, a scheduled monument, which is a designated heritage asset. However, the appeal site is well separated from the canal by a road, a grass bank, a public footpath and a number of trees which partially block the views between the two. Therefore, the proposal would not have a detrimental impact upon the setting or the significance of this scheduled monument.
11. Nevertheless, whilst the proposed development would not harm the setting of the nearby scheduled monument, it would result in harm to the character and appearance of the surrounding area and the Hythe Conservation Area. Therefore, it would conflict with Policy SS3 of the Folkestone and Hythe District Council Core Strategy Review (the CS) 2022 and Policy HB1 of the Folkestone and Hythe District Place and Policies Local Plan (the LP) 2020. These policies collectively seek to ensure new development contributes to local place-shaping by preserving and wherever possible enhancing conservation areas and their setting, making a positive contribution to its location and surroundings, enhancing integration while also respecting existing buildings and land uses, particularly with regard to scale, proportions and massing.
12. Whilst harm has been found, the harm to the significance of the Hythe Conservation Area from the proposed development is less than substantial. The Framework requires, where there would be less than substantial harm, for it to be balanced against the public benefits of the scheme.
13. The proposed development would make efficient use of previously developed land in a sustainable location through the provision of 14 new dwellings, at a time when housing delivery in the area is below the target. However, while the Framework advocates granting planning permission where there are no relevant development plan policies, this is unless, in accordance with paragraph 11(d)(i), the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. I consider that the 'less than substantial harm' identified to the character and appearance of the Conservation Area is such that the policies in the Framework relating to heritage assets provide that clear reason for refusing the development. Therefore, this would not weigh in favour of the proposed development and the public benefits of the scheme would not outweigh the less than substantial harm to the heritage asset identified.

#### *Living Conditions*

14. The proposed building would extend behind the dwellings at 17 and 18 Twiss Avenue. Although separated by a small garden space, the proposed building would be in relatively close proximity to the boundary between the appeal site and these two neighbouring dwellings.
15. At first floor level there would be two windows serving bedrooms and one window serving a stairwell, directly facing the rear of 17 and 18 Twiss Avenue. Although the windows serving the stairwell could be obscure glazed to prevent any overlooking to the gardens and rear windows of these neighbouring properties, this would not be possible for the bedroom windows. Therefore, due to the orientation, height and proximity, these windows would result in a loss of privacy to the occupiers of these neighbouring dwellings. The landscaping proposed would not be sufficient to fully screen the views between the two properties.

16. The appellant has submitted a daylight and sunlight assessment which concludes that the reduction in daylight to the rooms of the neighbouring buildings would be within acceptable limits set out within the BRE Guidelines. Furthermore, the part of the proposed building closest to the boundary with the neighbouring properties would mostly be only two-storeys in height and therefore would not result in a sense of enclosure or a loss of outlook to the occupiers of the neighbouring properties. Nevertheless, whilst the proposal may not impact the levels of daylight within the neighbouring dwellings or result in a loss of outlook, as outlined above the proposal would result in a loss of privacy to the occupiers of these neighbouring properties.
17. Therefore, the proposed development would have a harmful impact to the living conditions of the occupiers of the neighbouring dwellings, 17 and 18 Twiss Avenue, in relation to privacy and would conflict with Policies HB1 and HB3 of the LP. These policies collectively seek to ensure that proposals do not lead to an adverse impact on the amenity of neighbours, taking account of loss of privacy, and respects existing buildings and land uses along the boundaries of the development site.

### *Highway Safety*

18. The proposed development for 14 apartments includes 6 car parking spaces which are accessible via Twiss Avenue. The appellant has confirmed that this would be below the maximum parking standards by 8 spaces. Whilst there are no car parking restrictions on Twiss Avenue, the road is extremely narrow with limited space for on road parking or vehicle manoeuvring without blocking safe access for other vehicles and pedestrians.
19. Some on road parking provision may be possible on neighbouring Twiss Road. However, this is some distance from the appeal site and it is unlikely that this would be a viable option for long term resident parking. Furthermore, car parking in the neighbouring supermarket car park appears to be time limited and therefore it would not be possible for residents to use this facility.
20. It is noted that the appeal site is located within a town centre location with easy access to services and facilities and that ample cycle parking will be provided on the appeal site. However, public transport is limited to a bus service only and therefore it is still likely that the majority of future occupiers of the proposed development would rely on the use of a car for longer journeys. The substantial lack of on-site car parking would result in the overspill of vehicles onto Twiss Avenue and a large increase in on-street parking which, due to the nature of the road, would have a detrimental impact on highway safety for both vehicle users and pedestrians.
21. As the proposed development would result in harm to highway safety, it would be contrary to Policies HB2 and T2 of the LP. These policies seek to ensure that development provides well integrated parking that does not dominate the street, that there is sufficient parking for residents and visitors and that appropriate parking provision is available or can be provided.

### **Other Matters**

22. It is noted that the appeal site has an extant planning permission<sup>1</sup> for an extension to the care home which the appellant states has a similar footprint to

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<sup>1</sup> Ref Y08/0677/SH

the proposed development. Although works to commence this development may have begun in some regards, it seems unlikely that an extension to the care home would be fully implemented, for the viability reasons set out by the appellant. Therefore, this fallback position would not outweigh the harm that I have identified.

23. Whilst the principle of residential development on previously developed land within settlements may be supported, Policy HB11 of the LP states that planning permission will be granted for the demolition of a residential care home and new build development for residential use if a number of stipulations are satisfied. The first includes the provision of a viability report demonstrating that the residential care use is not economically sustainable, extension or adaptation is not viable and the property has been actively marketed at a reasonable rate for a period of at least 12 months and no reasonable offers have been made. The appellant has provided marketing evidence which it considers meets this requirement.
24. The second requirement ensures the design and layout take account of the design and sustainable construction policies within the LP. The third is to demonstrate that levels of traffic movements can be successfully accommodated and that parking can be provided in accordance with the requirements of policy T2. As it has been found above that the proposal would not accord with this second or third requirement, regardless of the viability of the care home, it would not accord with the stipulations of Policy HB11 relating to the loss of residential care homes.
25. Policy HB11 also refers to the provision of affordable housing in accordance with Policy CSD1 of the CS. This requires development proposing 11 to 14 dwellings at any location within the district to provide two affordable dwellings on-site. The appellant has stated that they are happy to provide a financial contribution for off-site provision, which is supported by Policy CSD1 if it can be robustly justified. This, along with the planning obligations requested by Kent County Council in relation to education infrastructure, are noted. A draft unilateral undertaking has been submitted by the appellant intended to secure these planning obligations. However, as I am dismissing the appeal, I have not considered this in any further detail.

### **Conclusion**

26. Therefore, for the reasons given above and having had regard to all other matters raised, the proposal would conflict with the development plan taken as a whole and I conclude that the appeal should be dismissed.

*E Grierson*

INSPECTOR