

Appeal Decision

Site visit made on 13 September 2016

by Claire Victory BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 December 2016

Appeal Ref: APP/J2210/W/16/3146996
50 Island Wall, Whitstable, Kent, CT5 1EL

- 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 Mr David Kinnersley and Mrs Penny Kinnersley against the decision of Canterbury City Council.
 - The application Ref CA/15/01206/FUL, dated 25 May 2015, was refused by notice dated 8 January 2016.
 - The development proposed is detached 2 bedroom dwelling, 2 storey plus room in roof, Neptune Gap (adjacent to Island Wall) together with partial demolition of dining room pavilion of 50 Island Wall, Whitstable, Kent, CT5 1EL.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council has referred to policies within its Canterbury District Local Plan Publication Draft 2014 on the Decision Notice. However, as the examination on this document has not yet been completed and I have no evidence before me as to the status of the policies or the nature of any representation received in regard to them, I have given only limited weight to them in reaching my decision.

Main Issues

3. Having regard to the parties' submissions and representations received the main issues are:
 - The effect of the proposal on the living conditions of neighbouring occupiers at Nos 52 and 54 Island Wall, with particular reference to outlook;
 - The effect of the proposal on flood risk;
 - Whether the proposal would provide adequate mitigation for biodiversity;
 - Whether the proposed development would provide satisfactory living conditions for future occupants, with regard to private amenity space;
 - Whether the proposal would preserve or enhance the character or appearance of the Whitstable Conservation Area; and
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- Whether the proposal would make adequate provision for off-street car parking.

Reasons

Living Conditions – neighbouring occupiers

4. Nos 52 and 54 Island Wall are a pair of semi-detached cottages located to the west of the appeal site, and separated from it by a narrow footpath. The appellants submit that the house has been designed so as to avoid overlooking of neighbouring properties, and that the massing of the building has been reduced in response to the pre-application comments with reduced roof heights and different roof slopes.
5. Nevertheless, due to the proximity of the dwelling to the rear of No 52 Island Wall, its size and height of about 9m, combined with the lower ground level of the rear garden of that property, the proposed dwelling would appear unacceptably overbearing to the occupants of No 52, when viewed from the rear ground floor windows and the rear garden. This effect would be exacerbated by the narrowness of the rear garden. The mature trees and shrubs along the boundary of No 52 would not wholly screen the development from the adjacent properties, nor would the adjacent footpath provide sufficient separation from the proposed dwelling to overcome the harm that would be caused.
6. Both Nos 52 and 54 Island Wall are angled slightly away from No 50. This, together with the greater distance from the appeal site means that the outlook from rear windows in No 54 would not be materially affected by the proposal. In addition there would be adequate separation from the appeal site so as to avoid an unacceptably overbearing effect when viewed from the rear garden of No 54, notwithstanding the difference in ground level.
7. I conclude that the proposal would cause material harm to the living conditions of the occupiers of No 52 Island Wall, in relation to outlook. It would be contrary to Policy BE1 of the Canterbury District Local Plan 2006 (LP), insofar as it requires development to have regard to the privacy and amenity of the existing environment, and the Framework, which requires a good standard of amenity for all existing and future occupiers of land and buildings.

Effect on Flood Risk

8. The appeal site is located about 9 metres behind the Sea Wall and lies within Flood Zone 3a. The most significant flood risk is tidal flooding from waves overtopping the sea defences. The National Planning Policy Framework (the Framework) specifies that the sequential test must be met, which requires new development to be directed to areas with the lowest probability of flooding, and that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.
9. The appellants submit that there are overriding reasons to develop parts of Whitstable within Flood Zones 2 and 3a. However, although the Canterbury Strategic Flood Risk Assessment recognises that it is not always possible to locate new development away from Whitstable town centre for economic and other sustainable reasons, this does not equate to a blanket acceptance of all new residential development or negate the need for a site specific assessment.

10. No evidence has been put forward to indicate that an additional dwelling is required in this location, or to demonstrate that there are no other suitable sites within the locality or the District as a whole outside Zone 3 that could accommodate a single dwelling. This is contrary to the Planning Practice Guidance (PPG), which requires that the developer justify with evidence the area of search that has been used when making the application. Moreover, there is nothing before me to suggest that a single dwelling could not be accommodated within the District as a whole in an area with a lower probability of flooding.
11. I therefore conclude that the proposed dwelling would not be suitably located having regard to the risk of flooding and specific policies in the Framework relating to flood risk indicate that development should be restricted as the sequential test has not been met. Accordingly there is no requirement to consider if the exceptions test has been met.

Biodiversity

12. The Framework requires planning permission to be refused if significant harm to biodiversity resources resulting from a development cannot be avoided, adequately mitigated or as a last resort, compensated for. The appeal site is located within 5km of European designated sites and therefore has the potential to affect their interest features. The proposed dwelling would give rise to a financial requirement towards the Thames, Medway and Swale Estuaries Access Management and Monitoring (SAMM) Strategy and the Thanet Coast and Sandwich Bay SPA SAMM, in accordance with LP policy NE1. This mitigation should be in place before the dwelling is occupied. The Council set out the amount sought in its planning statement.
13. Although the appellants have expressed a willingness to make such a contribution, they assert that they were unable to get confirmation from the Council as to the amount payable. Nonetheless, as no unilateral undertaking has been provided, I conclude there would be harm to the biodiversity interests in the absence of the required mitigation. This would be contrary to LP Policy NE1 and the Framework.

Living conditions – future occupants

14. The first reason for refusal states that the proposed dwelling would have insufficient amenity space for future occupiers. There would be no outdoor space at ground floor level but there would be balconies serving the living room and main bedroom. LP Policy BE1 does not specify minimum requirements for private amenity space.
15. The proposed dwelling would be a modest size, and whilst it could accommodate a family, future residents would occupy the dwelling in full knowledge of the facilities provided. Some private outdoor space has been provided, and the property is located very close to the public space available at the beach. I therefore conclude that the proposal makes adequate provision for private amenity space, and it would comply with LP Policy BE1.

16. Whitstable Conservation Area

17. Having regard to the Conservation Area appraisal (2000) and my observations on site, I consider the significance of the Whitstable Conservation Area lies in the variety of different styles and dates of property, which predominantly date

around the Victorian and Edwardian periods, but includes more modern developments.

18. The proposed dwelling would have a larger footprint than the permitted garage¹ and would be significantly taller, with a maximum roof height of approximately 9m in height. That said, the height of the dwelling would be broadly commensurate with that of the properties on either side, and there are plenty of examples of three storey houses or two storey dwellings with dormer roof accommodation. It would have limited outside space at ground floor level, and would have just a small frontage to Neptune Gap, but properties on the north side of Island Wall have a similar relationship to the street with relatively small front gardens. Whilst there are properties nearby with a smaller building to plot coverage ratio, and with larger gardens, the variety of plot sizes in the vicinity means that the proposal would not be incongruous with the character and appearance of the area.
19. Turning to design, the proposed dwelling would incorporate the use of traditional materials including render and weatherboarding, and would feature cantilevered balconies and glazing to the roof. There are examples of balconies elsewhere in the street scene including at No 50, and houses with weatherboarding, and thus these features would not be at odds with their surroundings. The juxtaposition of traditional and contemporary architectural details and materials, including extensive use of glazing is not inappropriate given the range of architectural styles and designs. Although the Council is concerned that the design is contrived, paragraph 60 of the Framework states that local planning authorities should not seek to impose architectural styles or particular tastes in determining planning applications. Details of the materials to be used can be controlled by condition should the scheme be acceptable in all other respects.
20. Taking all of the above into account, I conclude that the proposal would have a neutral effect on the character and appearance of the Whitstable Conservation Area, and thus its significance would be preserved. The proposal would accord with LP Policy BE7, which requires proposals to preserve and enhance all features which contribute positively to the character and appearance of the conservation area.

Off-Street Car Parking Provision

21. The existing car parking provision for No 50 within the garage and the parking space to the front of the garage would be retained, and the proposed dwelling would have 1 car parking space within a garage. LP Policy C9 refers to the Kent County Council vehicle parking standards, and LP Policy T9 states that the Residential Parking Interim Guidance Note (IGN) 3 will be applied to new development.
22. The Council considers that the proposal would have an under-provision of car parking, as Note 4 of the Interim Guidance states garages should not form a significant proportion of the overall provision. However, the appeal proposal meets the standard of 1 space for a 2 bedroom dwelling, and although this would be provided within a garage, the IGN 3 Guidance Table is expressed as maxima for edge of centre locations such as this one. In addition, IGN3

¹ Ref. CA/02/00716

indicates² that lower levels of parking will not cause problems in areas with on-street parking controls, and the garage cannot be used for habitation due to flood risks in the locality.

23. Parking demand in the locality is managed by double yellow lines restricting parking along the north side of Island Wall, and a resident's permit scheme including spaces on the south side of the road. I recognise that there is likely to be demand for parking due to the seafront location, but there is no compelling evidence before me that points to parking stress in this particular area. Furthermore, whilst there may be occasions of inconsiderate or illegal parking this is not a planning matter and would be dealt with by other regulations. Thus I conclude that the proposal would make adequate provision for off-street car parking, and it would accord with LP Policies C9 and T9.

Other Matters

24. There are concerns that the proposal would lead to overlooking of No 48b Island Wall. However, this property has a large rear garden and is separated from the appeal site by Neptune Gap. It would also retain open views towards the seafront. As a result there would be no material loss of privacy or outlook.
25. The appellants consider that the appeal proposal would enable them to downsize and remain within the local area, but this factor would not outweigh the material harm that would be caused by the proposal.

Conclusion

26. I have found that the proposal would preserve the character and appearance of the Whitstable Conservation Area, and would provide adequate off-street car parking provision. I have also found that it would provide satisfactory living conditions for future occupiers. However, the harm in respect of loss of outlook for the occupiers of No 52 Island Wall, and in relation to flood risk and biodiversity is decisive.
27. For the above reasons I conclude that the appeal should be dismissed.

Claire Victory

INSPECTOR

² Page 3, Kent Design Guide Review: Interim Guidance Note (IGN) 3 (2008) – Kent County Council