
Appeal Decision

Site visit made on 13 February 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 21 February 2017

Appeal Ref: APP/E2205/W/16/3164202

British Volunteer, 56-58 New Street, Ashford, Kent TN24 8TT

- 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 Phillip Morley of Texo Developments against the decision of Ashford Borough Council.
 - The application Ref 16/01466/AS, dated 22 September 2016.
 - The development proposed is for 2no. 2 bed dwellings.
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Decision

1. The appeal is dismissed and planning permission for 2no. 2 bed dwellings is refused.

Preliminary Matters

2. The site address provided on the planning application form has been amended to include No 58 New Street. I consider this to be more accurate and have thus employed it here.
 3. The former British Volunteer Public House is subject to planning permission (LPA Ref 15/01250/AS) for the conversion to six residential flats. Works to this building were underway at the time of my visit.
 4. The appeal is against the non-determination of the planning application within the prescribed period. The Council says that the application was not valid because an incorrect certificate of ownership had been submitted. A planning application must be accompanied by the relevant certificate of ownership. The appellant submitted Certificate A with the planning application. This indicates that the applicant is the sole owner of the application site. In fact, the appellant was not the sole owner of the land. Galahad Developments Limited had both ownership of the appellant's company and is the freehold owner of the land. Accordingly the correct certificate would have been Certificate B. Completion of Certificate B requires the appellant to serve notice on all other owners of the land.
 5. The requirement of the Certificate is set out in Article 13 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO). 'Requisite notice' means notice in the appropriate form, set out elsewhere in the DMPO. The requirement for the certificate is rooted in section 65 of the Act. Section 65(5) states that, '*A local planning authority shall not entertain an application for planning permission unless any requirements imposed by virtue of this section have been satisfied*'.
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6. Clearly, the Council could not entertain, let alone determine, a planning application not supported with the correct certificate. However, on realising its mistake (and there is no claim that it was anything other than a mistake) the appellant submitted a Certificate B confirming that notice had been served on Galahad Developments Limited. This has been submitted with this appeal.
7. The Council contends that the planning application could not be made good by the subsequent submission of the correct certificate. However, it does not appear to me that the Act or DMPO have been designed to be quite so inflexible. Once the requirement of section 65(5) has been satisfied, I cannot see that the planning authority is prevented from entertaining an application, even if that is after the application was submitted.
8. Of course, it is important that considerations of natural justice are taken into account. The requirement for certificates of ownership is to ensure that owners of land are aware of development proposals which may affect their property. I see no reason why the Certificate B could not have been truthfully completed in retrospect correcting the error to allow the application to be determined. In this instance the land owner's interests have not been prejudiced.

Main Issues

9. The main issues raised in respect of the appeal are the effect of the development on: -
 - (a) The character and appearance of the area;
 - (b) Whether the future residential occupiers of the former British Volunteer building would be provided with satisfactory outdoor communal garden area; and,
 - (c) The effect of the proposed parking arrangement on highway safety.

Reasons

The character and appearance of the area

10. The appeal site is situated behind the former British Volunteer Public House and adjacent to an access track at the rear of two-storey terrace properties that front onto Kent Avenue and New Street. To the north and north east of the appeal site the area is typified by narrow streets hosting terraced housing with back alleyways. This area has been designated a conservation area. Although retail stores and parking areas characterise development to the south and south east of the appeal site, the development immediately to the south west is a terrace of properties fronting on to New Street. The appeal site would, therefore, be located between existing terraced developments and would relate more closely to this pattern of development. Whilst the rear garden/yard areas of dwellings fronting New Street and Kent Avenue host some low key outbuildings or garages, they, in the main, remain undeveloped.
11. The proposal would be to the rear of the former British Volunteer Public House and would be positioned at a right angle to the development fronting New Street and the terraces to the north and north east. This would be out of keeping with the established pattern of terraced development in the area that fronts onto highways with gardens or yards to the rear. In addition, the scale and size of the proposed development would be significantly larger than any

other building to the rear of properties that front New Street and Kent Avenue. Such development would, therefore, introduce an intrusive and incongruous feature in an area of low key ancillary buildings. Whilst I do not conclude that the layout of the proposed dwellings with parking and private gardens would intrinsically appear cramped, the proposed development would not reflect the character and appearance of development in the area.

12. Although New Street and the appeal site do not fall within the designated conservation area, the proposed development, being positioned behind existing road frontage development, would be harmful to the strong sense of uniformity of the residential street pattern that characterises the area. This harm would be clearly visible to the users of the public highway, adjoining carpark and retail store nearby, as well as the surrounding neighbouring occupiers.
13. For these reasons I conclude that the proposed development would be harmful to the character and appearance of the area. The proposed development would be contrary to Policies CS1 and CS9 of the Local Development Framework Core Strategy (July 2008) and Policies TC1 and TC18 of the Local Development Framework Ashford Town Centre Area Action Plan (2010). These seek development of a high quality design and require buildings to respect the site context and to integrate with the surrounding development, amongst other matters. The proposed development would also be contrary to the aims of paragraphs 17, 57 and 58 of the National Planning Policy Framework that seek to secure high quality design and to ensure developments respond to local character.

Outdoor communal garden area

14. The Council is concerned that the development would remove the greater part of the communal garden previously allocated to the flats permitted under planning reference 15/01250/AS. This would result in significant loss of outdoor amenity space for the future residential occupiers of the adjacent British Volunteer redevelopment. These flats would have no private external amenity space and the communal outdoor space is an important area that would provide recreation, clothes drying and storage provision. The Council's Residential Space and Layout Supplementary Planning Document (SPD) requires flats to have some communal outdoor space protected from public view where balconies or terraces are not provided. The SPD indicates that two bedspace flats should have an outdoor space of 5m² for each flat. The remaining outdoor space is well in excess of these SPD requirements for six 1 and 2 bedroom flats and would provide ample outdoor space not open to public view. Therefore, I do not conclude that the resulting size of the outdoor communal garden area would be harmful to the living conditions of the future residential occupiers of these adjacent flats.
15. Overall, I conclude that the future residential occupiers of the former British Volunteer building would be provided with satisfactory outdoor communal garden area and, for the reasons given, would not materially conflict with Policies CS1 and CS9 of the Local Development Framework Core Strategy (July 2008) and Policies TC1 and TC18 of the Local Development Framework Ashford Town Centre Area Action Plan (2010) that require development of a high quality design. In addition, the proposal would not materially conflict with the requirements of the Residential Space and Layout SPD.

Parking arrangement on highway safety

16. The Council is concerned that the parking spaces for plot 2 positioned directly adjacent to a boundary fence would not be wide enough to enable car doors to be opened next to this boundary. The appellant contends that the parking spaces are in excess of 2.7m wide and would enable users to open their car doors. The Council's Residential Parking and Design Guidance SPD indicates that parking spaces flanked by a wall, fence or building to one side should be a minimum of 2.7m in width. I am satisfied that the parking spaces relating to plot 2 would meet this requirement.
17. In addition, concern is raised by the Council as to the inability of drivers to manoeuvre in to and out of the proposed parking spaces relating to plot 2 as the access track where these turning manoeuvres would take place is substandard and narrow. Taking this into account and the relationship of the parking spaces to the boundary fence, I accept that it would be difficult to manoeuvre to and from these spaces. The access track is not a through road but it is used by vehicular traffic, pedestrians and cyclists. Therefore, the lack of adequate manoeuvring space would increase the potential harm to the users of the access track. I am not persuaded by the appellant's suggestion that the imposition of a condition to address minor adjustments to the parking layout would overcome this harm given that space within the appeal site is limited.
18. For these reasons I conclude that the proposed parking arrangement would be harmful to highway safety. The proposed development would be contrary to Policies CS1 and CS15 of the Local Development Framework Core Strategy (July 2008) that require developments to achieve permeability and ease of movement, amongst other matters.

Other Matters

19. It is acknowledged that the Council do not have a five year supply of housing land in place. The proposed development would create two new homes in a sustainable urban location with ease of access to a wide range of facilities and would provide further choice of homes within the Borough. The proposed development would be acceptable in terms of the living conditions of adjoining occupiers and may contribute to improving surveillance in the area. However, these benefits would not outweigh the harm to the character and appearance of the area and highway safety that I have identified above.
20. A number of residents close by have raised other concerns in relation to the proposal but in view of my conclusion on the main issues, there is no need for me to address these in the current decision.

Conclusions

21. It is appreciated that pre-application advice was sought in this case. Notwithstanding my findings regarding to the outdoor communal garden area relating to the former British Volunteer building, the appeal is dismissed and planning permission is refused.

Nicola Davies

INSPECTOR