



Appeal Decision

Site visit made on 19 June 2017

by **C Jack BSc(Hons) MA MA(TP) MRTPI**

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

Decision date: 6th July 2017

Appeal Ref: APP/X2220/W/17/3172175

Land at 43 Dola Avenue, Deal CT14 9QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr T Easton of Easton Builders Ltd against the decision of Dover District Council.
 - The application Ref DOV/16/01038, dated 1 September 2016, was refused by notice dated 17 February 2017.
 - The application sought planning permission for the erection of 9 chalet bungalows together with associated parking and vehicular access without complying with a condition attached to planning permission Ref DOV/15/00327, dated 21 June 2016.
 - The condition in dispute is No 2 which states that: *The development hereby permitted shall be carried out in accordance with the following approved plans: 'Typical Sketch Elevations Plot 1', 'Typical Sketch Elevations plots 2, 3, 4, 5, 6, 7, 8 and 9' and 'Typical Sketch Plans Plots 2, 3, 4, 5, 6, 7, 8 and 9' as shown on drawing number 13/90/SK01 Rev. A and 'Proposed Site Plan', 'Proposed Street Elevation' and 'Proposed Neighbours Elevation' as shown on drawing number 13/90/51 Rev. C.*
 - The reason given for the condition is: *For the avoidance of doubt.*
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 9 chalet bungalows together with associated parking and vehicular access at Land at 43 Dola Avenue, Deal CT14 9QH in accordance with the application Ref DOV/16/01038, made on the 1 September 2016, without complying with condition No 2 set out in planning permission Ref DOV/15/00327 granted on 21 June 2016 by the Dover District Council, but otherwise subject to the Schedule of Conditions to this decision.

Preliminary Matters

2. The Supreme Court handed down judgement on the *Suffolk Coastal District Council v Hopkins Homes Ltd and SSLG, Richborough Estates Partnership LLP and SSLG v Cheshire East Borough Council* case on 10 May 2017. Having regard to the judgement, I do not consider that it has any direct implications for the cases of the parties in this appeal.
3. At my site visit I saw that the development of 9 dwellings is substantially complete and that flat roofed rear dormers have already been constructed at the 8 semi-detached units, and I have therefore determined the appeal under section 73A of the Act. However, the works as built are a little different to that shown on drawing EB/1001/PD/05 Rev B before me, largely because the number and placement of the windows installed differs, albeit they are high-

level, and therefore the submitted drawing does not fully reflect what I saw on site. I have determined the appeal on the basis of the submitted drawings only, which detail the scheme considered by the Council.

4. The original planning permission specified one dormer window and one roof light in the rear roof slope of each of the semi-detached chalet bungalows. Having been advised that this arrangement would not provide the necessary headroom to satisfy the Building Regulations, the appellant has altered the design to a single, wider, flat-roofed rear dormer to each semi-detached unit. This arrangement provides for headroom, natural light and ventilation to the two bathrooms at each unit. Accordingly, the appellant seeks to vary condition 2 of planning permission DOV/15/00327 to amend the list of plans covered by the condition so as to include flat-roofed dormers as well as to alter the position, and reduce the size of, windows in the side elevations.

Main Issues

5. The main issues are the effect that varying the condition would have on i) the living conditions of nearby occupiers, with particular regard to privacy and outlook and ii) the character and appearance of the area.

Reasons

6. The site comprises an area of land adjacent to 43 Dola Avenue, within the defined settlement confines of Deal, which is currently being developed for 9 new dwellings. The development is substantially complete, including the provision of flat-roofed dormers to the rear of Units 2 to 9, a row of eight semi-detached chalet bungalows. The area is predominantly residential in character with a mix of single storey and two-storey properties of mixed sizes and styles.

Living conditions

7. The area generally has a fairly tight-knit feel with no prevailing uniformity or rhythm to the layout of dwellings or their relationship to one another. The neighbouring properties closest to the rear of Units 2 to 9 are 41a Dola Avenue (No 41a) and 27 Foster Way (No 27), both of which share a common boundary with the appeal site. 25 Foster Way is the semi-detached neighbour of No 27 and is also in fairly close proximity to the development although it is separated from it by No 27 and its garden.
8. The dormer windows at Units 2 to 9 face directly towards these neighbouring properties. However, the windows within them are high level, being set approximately 1.7m above floor level, and furthermore the glazing installed is obscured. As a result, and particularly due to the high level position, no significant overlooking of neighbouring properties from the dormer windows will be likely following the occupation of Units 2 to 9. The rear dormer windows originally approved were set at a lower level and thus, notwithstanding any obscured glazing proposed, they would have afforded greater potential for overlooking, when opened, than high level windows. I therefore consider that the amended plans would not result in any significant loss of privacy to neighbouring occupiers, including when considered against the original permission.
9. The structures of the flat roofed dormers are significantly wider than those originally permitted. However, they are set at essentially the same base position in the roof slope and they have reduced height compared to the

approved pitched roof dormers. As a result, their physical relationship in terms of their distance from the boundary, and with neighbouring dwellings, is essentially unchanged. Taken across all eight units, the cumulative effect of the line of enlarged dormers will have increased their comparative dominance in the roof slopes and this, taken together with the white weather-boarded finish of the dormers against the grey roof tiles, is likely to have made them more visually apparent than the approved dormers would have been.

10. Nonetheless, and while this may have an effect of the perceived sense on enclosure at nearby properties, given that the dormers are not materially closer to them than those permitted I do not consider that the difference is significant in this respect. I am therefore not persuaded that there is a harmfully greater effect on the outlook from neighbouring properties arising from the revised dormers.
11. In light of the above, I conclude that the effect of the variation of Condition 2 would not amount to significant harm to the living conditions of nearby occupiers, with particular regard to privacy and outlook. It is therefore consistent with the relevant aims of the National Planning Policy Framework (the Framework) including paragraph 17, which among other things seeks to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Character and appearance

12. The development taking place on the appeal site has a distinct character and appearance. This includes by way of its individual layout and the materials used which differ, particularly notably in colour, from many properties nearby. However, this general approach is not uncharacteristic of the surrounding area, where pockets of development tend to share characteristics but the overall character and appearance is varied.
13. The site is set back from Dola Avenue, and is largely screened from public view from surrounding roads by existing built form. As such the site is not significantly prominent. However, it is visible from the path that runs past the entrance to the site, as well as from the turning head area of Foster Way from where the rear dormers of Units 2 to 9 are clearly apparent. In addition, more distant glimpses of the rear dormers can be obtained in gaps between some houses along Foster Way.
14. As set out above, the area is of a mixed character and appearance. While the flat-roofed dormers are clearly visible, particularly from Foster Way, they have a uniform appearance which adds to the general consistency of the appearance of the appeal site development. There are other dormers in the locality, most of which are flat-roofed examples including a number of front dormers in Foster Way, hence this approach is not generally out of keeping here, albeit the dormer structures at the appeal site are larger than most nearby examples. Furthermore, I note that the approved dormers would have been clearly visible in the street scene at this point, albeit they would have occupied less of the width of the roofs, which would have limited their prominence to some extent. While flat roofed dormers can often be out of keeping with their surroundings, in this case they moderately strengthen the strong and distinctive appearance of the development, particularly by way of their uniformity and rhythm.

15. In light of the above, I conclude that the effect of the variation of Condition 2 would not amount to harm to the character and appearance of the area. It is therefore generally consistent with the design aims of section 7 of the Framework, which seeks to ensure that development is of good design, including by being visually attractive, reflecting local character and reinforcing local distinctiveness without discouraging appropriate innovation and originality, and not imposing particular styles or tastes.

Other Matters

16. I have considered the various other matters raised by interested parties, including in relation to development not being carried out in accordance with the approved plans, precedent for other builders, financial compensation, the dwellings built not being chalet bungalows, and a fence having been erected where a wall was required by condition.
17. I note that development has been undertaken that is not in accordance with the approved plans. However, I am required to consider the appeal on the merits of the case and evidence before me. There is no significant evidence before me that other builders are particularly likely to do the same, and even if they did there could be no certainty of their gaining subsequent approval. The Written Ministerial Statement (WMS) of 17 December 2015 sets out that intentional unauthorised development, ie development that has been undertaken in advance of obtaining planning permission, is a material consideration to be weighed in the determination of applications and appeals. I have identified no significant harm in relation to the main issues in this case, and the WMS and the course of events leading to this appeal do not outweigh my findings above.
18. I have found no significant harm in relation to living conditions nearby and moreover financial compensation is not within the scope of this appeal. The original approval relates to chalet bungalows with rooms in the roof essentially facilitated by dormers. This appeal relates to the same, albeit with different dormers. I am advised that the fence in question has now been replaced by a wall.
19. I conclude that none of the matters discussed in this section of my decision add materially to the case for or against the appeal.

Conditions

20. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original permission and those suggested by the Council. The PPG makes it clear that decision notices for the grant of planning permission under section 73 should repeat relevant conditions from the original planning permission, unless they have already been discharged. I am advised that details pursuant to some original conditions have been agreed. In the event that other conditions have in fact been discharged, that is a matter which can be addressed by the parties.
21. No commencement condition is necessary as development is nearing completion. A condition relating to bicycle storage is necessary for the ongoing sustainable operation of the development but I have removed reference to pre-commencement requirements in line with the Council's suggestion. I have also not re-imposed pre-commencement conditions relating to SUDS, the raised

table, or materials and boundary treatment details. I have imposed the Council's suggested condition requiring the full implementation of the agreed surface water drainage scheme. A landscaping scheme is necessary in the interests of character and appearance.

22. I have not included the suggested conditions in relation to tree protection and the removal of permitted development rights as these were not included on the original permission and have not been justified as necessary in relation to the case before me. I have re-imposed original condition 10 which relates to permitted development rights for windows as this is necessary in the interests of the living conditions of nearby occupiers and it includes ongoing requirements. A condition relating to the boundary wall at Unit 9 is necessary in the interests of living conditions. Visibility splays, traffic warning signage, and the provision and retention of access, parking and turning facilities are necessary in the interests of highway safety.

Conclusion

23. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Catherine Jack

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 'Typical Sketch Elevations Plot 1' as shown on drawing number 13/90/SK01 Rev A and 'Proposed Site Plan', as shown on drawing number 13/90/51 Rev C and EB/1001/PD/05 Rev B.
2. The areas shown on the approved drawings as vehicle parking, access and turning space shall be provided, surfaced and drained before the dwellings are first occupied, and shall be retained for that use thereafter whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, and re-enacting that Order with or without modification).
3. The development hereby permitted shall not be occupied until a landscaping scheme for the site has been submitted to and approved in writing by the local planning authority. The said scheme shall include tree/hedge/shrub planting plans; written specifications; schedules of species, sizes and proposed numbers/densities where appropriate. Thereafter, the approved landscaping scheme shall be carried out fully within 12 months of the completion of the development. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the local planning authority give prior written consent to any variation.
4. The bicycle storage, as shown on drawing number EB/1001/PD/01 D shall be completed prior to the first occupation of the development and shall thereafter be maintained solely for that purpose.
5. The approved surface water drainage scheme shall be fully implemented and shall thereafter be managed in accordance with the as shown by the 'MONSON – Surface water drainage and sustainable drainage management and maintenance plan', drawing number 8028/02B and the 'Soakaway Design' by MONSON.
6. The visibility splays shown on 'Proposed Site Plan' on drawing number 13/90/51 C, shall be provided prior to the first occupation of the dwellings and thereafter shall be so maintained. No structure, tree or plant within the approved splays shall exceed 0.6 metres in height.
7. The first floor windows in the north west roofslope of the units 2 to 9 (inclusive) shall have a cill height of no less than 1.7 metres above finished floor levels. The windows shall be so installed prior to the first occupation of the dwelling to which they relate and shall thereafter be maintained as such. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no openings shall be constructed in the north western roof of the buildings, other than as hereby approved.
8. The 1.8 metre high boundary wall to the north west boundary of Unit 9, adjacent to Foster Way, shall be retained.
9. The traffic warning signage, as shown by drawing number EB/1001/PD/01 D shall be erected prior to the first occupation of the development hereby approved. The signage shall thereafter be retained.