



Appeal Decision

Site visit made on 13 August 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th October 2019

Appeal Ref: APP/J2210/W/19/3229863

4 Cromwell Road, Kent, Whitstable CT5 1NW

- 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 Suzanne Folkard against the decision of Canterbury City Council.
 - The application Ref 18/01977, dated 11 September 2018, was refused by notice dated 30 November 2018.
 - The development proposed is a one-bedroom detached dwelling.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application and appeal were both made by Miss Stuart-Smith. However, it has since been confirmed by the agents representing the appellant that Miss Stuart-Smith is now known as Suzanne Folkard. Consequently, I have used this name in the heading above.
3. Two revised plans were submitted with the appeal that show alternative versions of the rear elevation of the proposal. One shows obscure glazed windows at first floor level and the other shows these windows as 'blanked-out'. Both of these changes would be minor in nature and the Council and third parties have had the opportunity to comment on the revised plans through the appeal process. Consequently, I do not consider that any party would be prejudiced by my acceptance of them. I have therefore had regard to the revised plans in my consideration of this appeal.

Main Issues

4. The main issues are:
 - whether or not the proposal would preserve or enhance the character or appearance of the Whitstable Town Conservation Area;
 - the effect of the proposal on the living conditions of the occupants of No 4 and future residents of the proposal, with particular regard to privacy and outlook; and
 - the effect of the proposal on the integrity of the Swale and Thanet Coast and Sandwich Bay Special Protection Areas.

Reasons

Conservation Area

5. The appeal site is located within the Whitstable Town Conservation Area (CA), a designated heritage asset. I therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of this CA. The National Planning Policy Framework (the Framework) also advises that great weight must be given to the conservation of designated heritage assets and any harm which is less than substantial must be weighed against the public benefit of the proposal.
6. In considering the significance of the CA, the evidence before me shows that this results from the relationship of the settlement to a coastline which has influenced the built form and character of the architecture. Cromwell Road predominately comprises rows of two storey, terraced, residential properties. These have projecting gable features and most have long rear gardens. This gives them a strong sense of rhythm and uniformity. The significance of this part of the CA derives in part from this interesting group of late Victorian properties with seaside flair which have not suffered from inappropriate alterations.
7. The appeal site is positioned towards the western end of Cromwell Road, near to the junction with Oxford Street. It forms part of the rear garden of No 4 which is one half of a pair of semi-detached dwellings constructed around the 1930s. The site is currently used for the parking of vehicles associated with this property. Immediately to the east is a car park utilised by local residents. The density and character of development changes to the west of the site at the corner of Cromwell Road and Oxford Street. However, in my view No 4 is mainly read in conjunction with the more traditional layout of residential properties further along Cromwell Road. Its relatively long, open, rear garden contributes positively to the rhythm of such dwellings. Consequently, I find that the appeal site contributes positively to the character and appearance of this part of the CA.
8. The proposal would subdivide the garden at No 4 to construct a one-bedroom detached dwelling. Not only would the introduction of a dwelling of this size and mass erode the sense of openness, but it would also considerably reduce the depth of this rear garden. Whilst the resulting garden at No 4 would be commensurate with the size of some nearby properties, it would be markedly smaller than the majority of gardens along Cromwell Road. Consequently, the proposal would disrupt the rhythm and uniformity of development along this street. In addition, whilst I note that the footprint of the proposed dwelling would occupy approximately 37% of the plot, it would be sited close to its side boundaries with only a small garden area. This would give the proposal an unduly cramped appearance, reinforcing its disruption to the pattern of surrounding development.
9. I appreciate that there are backland type residential developments to the rear of properties which front Oxford Street. These are visible from Cromwell Road and some afford little or no external amenity space. However, this type of development is not a defining characteristic of Cromwell Road and falls within an area of the street which differs in character compared to that in which the appeal site is read. I therefore do not find that this is sufficient justification to

allow a proposal that would detract from the character of the CA in the manner identified.

10. Additionally, when viewed in isolation I am satisfied that the height and traditional design of the proposal, which could incorporate suitable materials, would harmonise with adjacent built form. However, such a design would not address the fundamental problem associated with its overall size and siting. Consequently, a condition specifying materials would not mitigate the harm I have identified.
11. Taking everything together, I am not persuaded that the proposal would represent a natural infill to the site or appropriately 'square-off' nearby development. On the contrary, it would fail to integrate effectively with this historic environment and would not function well or add to the quality of the area, as advocated by the Framework. Although not overly conspicuous from Oxford Street or Cromwell Road, its harmful impact would be apparent from the adjacent car park and from several nearby properties and their rear gardens.
12. For the reasons given, I conclude that the proposal would be harmful to the significance of the CA and its character and appearance as a whole would not be preserved or enhanced. Accordingly, it would conflict with Policies DBE3, HE1, HE6 and HE8 of the Canterbury District Local Plan (LP) insofar as they seek to strengthen local distinctiveness and conserve designated heritage assets, such as conservation areas, in a manner appropriate to their significance. The Council also refers to conflict with its adopted Guidelines to Control Residential Intensification (2008). However, this document has not been provided and I therefore do not know if this would be the case. In any event, as I have found conflict with the above mentioned policies of the development plan, this has not been determinative in my decision.
13. Turning to the Framework, this states that windfall developments, in the right location, can make a contribution to meeting housing requirements. However, this should not be at the expense of achieving high quality development which is sympathetic to local character. I have found that the proposal would not achieve this. There is therefore conflict with the design objectives of the Framework. In terms of its advice regarding the historic environment, I consider that the harm identified above would be less than substantial. Any such harm nevertheless merits great weight in accordance with paragraph 193 of the Framework and falls to be weighed in the balance with the public benefits of the development. I will return to this in my overall planning balance.

Living Conditions

14. The proposed dwelling would be within close proximity of No 4 and it would have two first floor, north facing, windows which serve a bedroom and a kitchen. These windows would afford direct and close distance views of the rear of this neighbouring property as well as its rear garden. This would unacceptably harm the privacy of the occupants at No 4.
15. To overcome this, the appellant has provided a revised drawing showing the above mentioned windows as 'blanked-out'. I note that there would be roof lights serving both the kitchen and bedroom in the proposed dwelling. Nonetheless, this would reduce the outlook within this property and affect its

appearance. In my view, this revised rear elevation would therefore draw the eye to the proposal's cramped nature, to the further detriment of the character and appearance of the CA. Consequently, I do not consider that this alternative rear elevation would be appropriate. For the same reasons, I do not consider that it would be reasonable, with regard to the tests at paragraph 55 of the Framework, to impose a condition ensuring that these windows are obscure glazed and restricted in terms of opening as shown on another revised plan submitted with this appeal.

16. For the reasons given, I conclude that the proposal would adversely impact upon the living conditions of the occupants at No 4 in terms of privacy or future residents of the proposal with regard to outlook. It would therefore conflict with Policy DBE3 of the LP. Amongst other things, this seeks to ensure that proposals do not harm the privacy and amenity of neighbouring buildings. It would also conflict with the Framework insofar as it seeks to ensure that developments secure a high standard of amenity for existing and future users.

Special Protection Areas

17. From the evidence before me, it would appear that the proposal could impact upon the Swale and the Thanet Coast and Sandwich Bay Special Protection Areas (SPAs). These are European designated sites. The Council's third reason for refusal refers to Policies LB5 and SP6 of the LP, which seek to ensure that developments do not adversely affect the integrity of SPAs and provide appropriate mitigation measures. It also refers to Policy SP1 of the LP. However, this is a broad policy which outlines the way in which the Council will assess proposals. It is therefore not relevant to this main issue.
18. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. In this case, the Council raised concern that the proposal, in the absence of any mitigation, would have a detrimental impact upon SPAs. In response to this, a draft S106 Agreement has been submitted with this appeal which shows the appellant's commitment to providing financial contributions for mitigation.
19. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. As the competent decision making authority, even if the identified S106 Agreement was signed, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties to seek further information in order to complete an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Other Consideration

20. Reference has been made by the appellant to the appeal site representing previously developed land (PDL). However, as the site comprises part of a residential garden within a built-up area, I do not consider that it meets the

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

definition of PDL within Annex 2 of the Framework. Consequently, it does not gain the support of the Framework in this regard.

Planning Balance

21. The Government is seeking to significantly boost the supply of housing. The proposal would provide a dwelling in an accessible location. It would therefore make a small contribution to the Council's housing stock and result in some limited social and economic public benefits through construction and occupation.
22. I also note that the proposal would meet some other requirements of the development plan. For example, a suitable quantum of external garden space would remain at No 4 for the enjoyment of the occupants of this property and the proposal would not prejudice highway safety. These are therefore neutral factors in the overall planning balance.
23. On the other hand, I am not satisfied that the proposal would preserve the living conditions at No 4 in terms of privacy or provide suitable living conditions for future residents with regard to outlook. This factor weighs against the proposal, reducing the associated public benefits of the scheme. In addition, I have found that the proposal would result in harm to an identified designated heritage asset, which I consider would outweigh any public benefits associated with this scheme.
24. Although the principle of a dwelling at this location would be acceptable, I therefore conclude that the proposal conflicts with the development plan when read as a whole. There are no other considerations, including the advice of the Framework, that outweigh that conflict.

Conclusion

25. Having regard to the above reasons and to all other relevant matters raised, I conclude that this appeal should be dismissed.

M Heron

INSPECTOR