
Appeal Decision

Site visit made on 10 December 2019

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th January 2020.

Appeal Ref: APP/P1235/W/19/3227154
35 Easton Street, Portland DT5 1BS

- 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 and Mrs Spencer Cullum against the decision of Dorset Council.
 - The application Ref WP/18/00302/FUL, dated 9 April 2018, was refused by notice dated 2 April 2019.
 - The development proposed is for the erection of 3 No two storey cottages.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Spencer Cullum against the Council. This application is the subject of a separate Decision.

Procedural Matter

3. During the Council's assessment of the application amended plans were submitted. The Council determined the application based on these amendments, and I have dealt with this appeal in the same way.
4. Between the submission and determination of the planning application the Council had changed its name from Weymouth and Portland Borough Council to Dorset Council and accordingly I have referred to the latter in the banner heading above.
5. While the Council's decision notice did not include refusal reasons relating to the effect of noise and disturbance on existing neighbouring occupiers and privacy on future occupiers, there are comments in relation to them in the Council's appeal statement. The Appellant has had the opportunity to respond to these. I have therefore referred to the Council's further comments in the main issues below.

Main Issues

6. The main issues are:
 - The effect of the proposed development on the living conditions of existing neighbouring occupiers, with particular regard to privacy, outlook and noise and disturbance;

- Whether the proposed development would provide adequate living conditions for future occupiers, with particular regard to amenity space and privacy.
- Whether the proposed development would preserve or enhance the character or appearance of the Portland Conservation Area.
- The effect of the proposed development on highway safety, with regard to the adequacy of visibility at the access with Eaton Street.

Reasons

Effect on living conditions of existing neighbours

7. The appeal site comprises a former public house and its rear beer garden, located within the Portland Conservation area (PCA). The proposed dwellings along with associated amenity space and parking would be located in a backland location behind dwellings fronting Eaton Street.
8. The proposed dwellings would be arranged in a terrace comprising three 3-bedroom properties. The units would have accommodation on ground and first floor levels, whilst the 3rd bedroom would be located in the roof space.
9. The southern and western boundaries of the appeal site adjoin part of No 29 Eaton Street's (No 29), residential curtilage. The side flank wall of No 29 is separated from the southern boundary of the appeal site by a narrow passageway. No 29 has an L shaped amenity space that would have the rear elevations of the proposed dwellings facing it. It has a shallow front garden area and immediately beyond and rising above its front boundary wall is a neighbouring single storey detached outbuilding that faces No 29's front elevation.
10. The flank wall of the proposed south facing end dwelling would face that of No 29, while also being in close proximity to the common boundary. The proposal would also project unduly beyond the front elevation of No 29. At 2½ storeys high and with an imposing gable end, the proposal would consequently create a dominant and oppressive feature that would have an overbearing effect upon the outlook of No 29 from both the front garden and from within rooms with a front facing aspect. Combined with the existing neighbouring detached garage, the proposal would physically enclose the space to an unacceptable extent, accentuating the oppressive effect on this neighbouring outside space.
11. Notwithstanding the above, I do not consider that this level of impact extends to No 29's first-floor side window in the rear projecting wing. This window would not directly face the proposed dwellings, while their forward projection would mean that views of the proposal would be oblique. Consequently, the proposal would not likely have an overbearing effect on neighbouring outlook in relation to the side window in question.
12. The proposed dwellings would face the private garden area of No 29, and would be separated from this amenity area by a distance of less than 5m. The proposed first floor bedroom windows would have a direct view into the garden of No 29. Given the very close relationship the proposal would result in a significant and unacceptable invasion upon the privacy of the existing occupiers when using their garden areas. It is acknowledged that there is a boundary

wall separating the site from No 29's amenity area, along with garden outbuildings, however, these do not afford sufficient screening of the private space from proposed first floor windows and would not negate the harm.

13. I accept that the site is within an existing residential area where complete freedom from intrusion is rarely possible, but I consider that the proposed development exceeds what would be an acceptable degree of overlooking in this instance.
14. The site's previous use as a public house beer garden is acknowledged. The noise characteristics that would have been associated with this would be similar if not greater in volume compared to noise from 3 private gardens. I do not therefore consider there would be additional noise and disturbance over and above that which would have previously occurred, and I found no harm in this respect.
15. Whilst I have found that the proposal would not result in any harm to the amenities of existing neighbours in terms of noise and disturbance, the proposed development would have a harmful effect on the living conditions of the occupiers of No 29, with particular regard to their outlook and privacy. The proposal is therefore contrary to Policy ENV16 of the West Dorset, Weymouth and Portland Local Plan 2015 (LP), which seeks to protect the amenity of existing and future residents. The proposal would also be contrary to the National Planning Policy Framework (Framework), which requires that development proposals create places with a high standard of amenity for existing occupiers.

Effect on living conditions of future occupiers

16. The rear garden spaces serving the proposed dwellings would have a shallow depth of less than 5m and a comparable width. Although the Council does not have any guidance on space standards for new dwellings, I consider that the amount of space allocated to each plot would be modest for a 3-bedroom home that might house a family. The dimensions of the area serving each dwelling result in a restricted space with limited functionality. I consider that this would result in an inadequate living environment for the space needs of future occupiers of a 3-bedroom dwelling. The space would be restricted further by the proposed bike storage area along with the expected garden paraphernalia such as tables and chairs.
17. Reference has been drawn to other developments in the area that have comparable private amenity space. Although I have not been given details of their dimensions or the type of dwellings they relate to, I found that those I was able to observe had larger gardens both in terms of their length and width and would more than likely be commensurate to the space needs of the dwellings they related to. In any event, each proposal should be considered on its own merits, as I have done in this instance and that other developments do not lead me to a different conclusion in respect of amenity space.
18. Whilst parks and recreation grounds nearby could be used for recreation and amenity purposes, I do not consider these address the reasonable space expectations future residents would have for an area of private outdoor space.
19. The intervening space between the existing first floor window in the flank wall of No 29 and the proposed garden of the southernmost dwelling comprises a

small yard area. Such an inadequate separation distance would result in the window looming over the nearest proposed garden to the extent that there would likely be a significant intrusion from overlooking on the privacy of future residents that might expect to enjoy using this space. I consider that this harmful effect would be greatest from within the proposed garden of the southern most dwelling, as satisfactory separation distance is maintained from the other gardens.

20. Therefore, there would be a harmful effect on the living conditions of future occupiers of the proposed development with particular reference to amenity space and privacy. In doing so it would be contrary to Policy ENV16 of the LP and the Framework, where they require development proposals to protect the amenity of future occupiers.

Portland Conservation Area

21. As the appeal site is located within the PCA, I have attached considerable importance and weight to the desirability of preserving or enhancing the character or appearance of the Conservation Area (CA) in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
22. From my observations on site the immediate area consists of primarily 2 ½ storey dwellings with narrow frontages following a linear arrangement, closely aligned to the edge of the pavement. Building frontages are relatively consistent in terms of their detailing, incorporating chimneys, bay windows and exterior walls finished in stone or render. Easton Gardens located a short distance to the south of the appeal site is a public open space with lawns and trees around its boundary, forming an important focal point where surrounding streets meet. Based on my findings I consider that the PCA derives part of its significance from the historic fabric and detailing of building frontages, the linear street layout and the verdant public square at Eaton Gardens.
23. Located behind the principle frontage of Easton Street, the appeal site is occasionally glimpsed above boundary walls and through narrow gaps between dwellings. It is located amongst rear gardens, small and large outbuildings and other dwellings built behind street facing properties, that all add to its discreet location. Property gardens range from long and narrow to shallow and modest. The many structures in this backland setting have a random arrangement in contrast to the more consistent positioning of Easton Street's road facing dwellings. Garden buildings are generally utilitarian and appear as later structures to the older dwellings they relate to.
24. Where dwellings exist, these are generally consistent with the scale and design of those in the wider area of the PCA. I note that the Council's assessment of the immediate area is of an open and undeveloped backland setting. However, the structures I observed in this context have eroded this appearance. Moreover, even where gardens were devoid of buildings, they were enclosed by high stone boundary walls that were seen as a succession of built enclosures, fragmenting the undeveloped and open space behind this part of Easton Street.
25. The proposed dwellings would have 2 ½ stories and be located within narrow plots that align with the width of each dwelling. Their massing and profile would be similar to surrounding street facing and backland properties, while incorporating materials that would be acceptable in the context of the area.

26. Although the proposed rear amenity space is limited, I found that the dwellings would be set within plots that have similar spatial arrangements to other properties in the area. Therefore, I consider that the proposed dwellings at this backland location would not appear wholly inconsistent with the immediate environs and would readily assimilate into the surroundings. In doing so I consider that the aspects of the PCA that contribute towards its importance would be preserved and no harm to its significance would be incurred. Besides, the proposal would be consistent with the character and appearance of the area more generally, irrespective of the sensitivity of this particular context.
27. The proposal would preserve the character and appearance of the PCA. It would therefore accord with Policy ENV4 of the LP on heritage as well as the more general design and layout provisions of Policy ENV10 and ENV12 of the LP. The proposal would also comply with the Framework which requires heritage assets to be conserved in a manner appropriate to their significance.
28. Policy ENV4 of the LP relating to heritage assets was not referred to in the Council's reasons for refusal, however, it is relevant to this assessment and therefore I have referred to it in concluding on this main issue.

Highway safety

29. Access to the proposed dwellings would be by means of a narrow entrance between No 33 and No 35 Easton Street. Vehicles emerging from the entrance would have their visibility restricted by the high flank walls of the properties either side, in addition to a projecting bay window to the left of the access. Before manoeuvring onto Eaton Street, a wide pavement would need to be crossed, and a dropped kerb is proposed to facilitate this.
30. I acknowledge that visibility is significantly impaired, although it is highly likely that vehicles merging on to Easton Street would be doing so with caution and at low speeds. I noted these types of manoeuvres at other restricted accesses in the vicinity during my site visit. Furthermore, the wide pavement and presence of the projecting bay window would likely make pedestrians take a wider route along the pavement away from the access. This, in my view would increase the likelihood of pedestrians being alert to cautiously emerging vehicles, thus reducing conflict. Also, the sound from car engines would likely be audible and provide pedestrians with an indication that a vehicle is about to emerge from the access and cross the footway. I therefore do not consider that the safety of pedestrians would be materially harmed by the proposed access.
31. Consequently, the proposal would have an acceptable effect on highway safety as the proposed access onto Easton Street is considered suitable. The proposal therefore complies with Policy COM7 of the LP, which amongst other things, requires development not to have a severe detrimental effect on road safety.

Planning Balance

32. The Council accept that they do not have an up to date 5-year housing land supply. Therefore, Paragraph 11 of the Framework advises that where policies relating to the supply of housing are considered to be out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

33. In relation to the sustainable development objectives in the Framework, I acknowledge that the appeal scheme would be located in an existing built up area with good accessibility to various modes of transport, services and facilities, and the general thrust of national policy seeks to boost housing provision. I accept that it would also be an efficient use of underused land, and have a design and use of materials that is consistent with other dwellings.
34. However, good design also relates to respecting the amenities of existing and future occupiers, but this proposal is not acceptable in that regard. Whilst I admit that the Framework supports small scale development, the contribution of 3 dwellings to the supply and mix of housing in the area would be minimal, as would be any economic benefits resulting from the construction period and spending of future occupiers. Moreover, the harm to the living conditions of neighbours and future occupiers would conflict with the environmental and social objectives of achieving sustainable development.
35. Overall, whilst I have given weight to the benefits of the development in my decision, in this case, I consider that the harm to the living conditions of existing and future occupiers and the associated conflict with the development plan, significantly and demonstrably outweighs the identified benefits when assessed against the Framework as a whole. That the proposal would not incur any harm to highway safety and the significance of the PCA are of neutral consequence in the overall planning balance. Therefore, the proposal would not be a sustainable form of development, and the conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

36. For the reasons given above, I conclude that the appeal should be dismissed.

R. E. Jones

INSPECTOR