

Appeal Decision

Site visit made on 4 August 2020

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2020

Appeal Ref: APP/D1265/W/20/3250379

Land adjacent to 151 Brandy Row, Brandy Row, Portland DT5 1AP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Terry Lane against the decision of Dorset Council.
 - The application Ref WP/18/00569/FUL, dated 7 September 2018, was refused by notice dated 8 October 2019.
 - The development proposed is erection of dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2019, Weymouth and Portland Borough Council ceased to exist and became part of a new Unitary Authority known as Dorset Council. The development plans for the merged Local Planning Authorities will remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced. I shall therefore determine the appeal having regard to the policies set out within the West Dorset, Weymouth and Portland Local Plan¹ (LP).

Main Issues

3. The main issues are:
 - Whether the development would preserve or enhance the character or appearance of the Underhill Conservation Area;
 - The effect of the development on the living conditions of neighbouring residents, having particular regard to outlook, light and privacy; and
 - Whether the proposal would be suitably located, having regard to national and local planning policies which seek to steer new development away from areas with the highest risk of flooding.

Reasons

Conservation Area

4. Located within the Underhill Conservation Area, the appeal site comprises a small corner plot fronting the sea wall, which lies prominently at the junction between Brandy Row and Brandy Lane and is formally enclosed by a low stone

¹ Adopted October 2015.

wall. The special interest of the conservation area derives to a large extent from its fine collection of tightly-packed terraced properties and cottages, which are characterised by their relatively simple design form and complementary materials palette, thus creating a harmonious and picturesque townscape.

5. As detailed within the Appraisal of the Conservation Areas of Portland (as amended 2017), the extensive and varied forms of terraced housing reflect the need to accommodate the rapidly expanding population which the area was confronted with during the later Victorian and the Edwardian period. For these reasons, the conservation area holds architectural and historic interest, and represents what would have been an important phase in the development of Portland.
6. The proposal would appear as a continuation of the existing terrace, using appropriate materials and picking up on design cues found elsewhere along Brandy Row. However, by reason of the constrained size of the plot, the proposed two-storey element would fail to replicate the proportions of other neighbouring properties, and appear squeezed into this narrow plot. This would also be exemplified by the footprint of the proposed dwelling which, together with the car parking area to the rear, would leave limited scope for the provision of private and usable amenity space for future occupiers of the development. For these reasons, the proposal would result in a contrived and congested form of development, which would fail to relate well to its historic surroundings.
7. The appeal scheme would also incorporate a number of measures to make the new property resilient to flooding, for example by raising the proposed ground floor level. However, as a result, the proposed dwelling would detract from the established character and appearance of the conservation area, having particular regard to the formation of steps and associated railings, but also the raised courtyard, which would unduly stand out as alien features, notably in the context of this sensitive street scene.
8. Additionally, the Council is concerned that further harm would be created by the formation of a car parking space, which would be accessed via Brandy Lane. As part of my site visit, I was able to observe other off-road parking arrangements, and its location to the rear of the proposed dwelling would reduce its prominence. Subject to the use of suitable materials, I find that this aspect of the proposal would have a neutral effect on the quality of the street scene and the conservation area.
9. Overall, the appeal scheme would fail to preserve the character and appearance of the Underhill Conservation Area. It would therefore conflict with LP Policy ENV4 which, amongst other things, seek to conserve and where appropriate enhance the significance of heritage assets and their setting. The proposal would also fail to accord with LP Policy ENV12, which requires new developments to complement and respect the character of the surrounding area.

Living conditions

10. The proposed two-storey dwelling would be constructed within close proximity to no. 155 Brandy Lane – Chiswell (no 155), which sits on the boundary shared with the appeal site. This neighbouring building has a window on the elevation

facing onto the appeal site, which appears to serve a habitable room. The property also benefits from a small courtyard, which is immediately adjacent to the appeal site. Only a modest gap would be retained along part of the site's eastern boundary for the provision of a car parking space.

11. I have not been presented with detailed evidence to substantiate the concerns raised by the Council with regard to overshadowing, the extent of which, in any event, would vary according to the time of day and the season. However, by reason of its overall bulk, scale and proximity to no 155, the proposal would severely restrict the natural light and outlook from the first floor window and courtyard. As a result, the development would give rise to a gloomy and unpleasant sense of enclosure, which would be detrimental to the living conditions of the occupiers of this neighbouring property.
12. The cottages on the opposite side of Brandy Lane lie directly adjacent to the highway and would also be adversely affected by the proposal. The main ground and first floor windows situated on the front elevation of these neighbouring properties would be looking directly towards the two-storey dwelling at close quarters, by reason of the limited width which characterises Brandy Lane. For these reasons, the proposal would have a detrimental impact on the outlook from these neighbouring windows. In my view, the harm identified would not be satisfactorily mitigated by the reduced scale of the single storey element which would sit alongside the lane. Furthermore, I am concerned that the windows serving the kitchen and bedroom 1, which would be located to the South-East elevation, would give rise to harmful levels of overlooking onto no 187 Brandy Lane in particular.
13. The appeal scheme would cause unacceptable harm to the living conditions of the neighbouring occupiers of no 155 and the cottages on the opposite side of Brandy Lane, having regard to outlook, loss of light and overlooking. It would therefore fail to accord with LP Policy ENV16, which notably seeks to ensure that development proposals do not have a significant adverse effect on the amenities of the occupiers of properties through loss of privacy, inadequate daylight or overbearing impact.

Flood risk

14. A large part of the appeal site falls within Flood Zone 3b, as detailed within the Council's Strategic Flood Risk Assessment Level 1 (update 2018). Buildings used for dwelling houses such as the appeal scheme are recognised by national planning policy and guidance as a more vulnerable form of development, which should not be permitted in such a sensitive location (e.g. Flood Zone 3b) and accordingly, the Environment Agency (EA) has issued a holding objection to the proposal. The EA's submissions confirm that the site lies within an area known to be at risk from extreme flooding during coastal storm events, with historic records showing that a number of properties have experienced severe flooding in the past.
15. Whilst paragraph 164 of the Framework advises that some minor development and changes of use should not be the subject to the sequential or exception tests, this does not include proposals for the construction of new dwellings, as detailed within Footnote 51. Therefore, the appeal scheme constitutes, for the purposes of national planning policy and guidance in respect of flood risk and coastal change, major development.

16. I have had regard to the appellant's Sequential Test, which concludes that there are no reasonably available sites on Portland for a single dwelling in a location at a lower risk of flooding. It is of particular note that the Sequential Test refers to a number of sites benefiting from planning permission, which are privately owned. However, the extent of the sequential test should not be constrained by land ownership. On this basis, it cannot be concluded that there are no sequentially preferable locations for the proposed development.
17. The appellant's submissions show how flood risk would be managed on the appeal site, for example by rising the floor levels and entrance to the property, but the national Planning Practice Guidance (PPG) clearly states that the Exception Test should only be applied following application of the Sequential Test. Even if it passed the Exception Test, the proposed development would still fail the sequential approach as required by the Framework and the PPG.
18. My attention has been drawn to a number of planning applications which have been approved by the Council in recent years on sites located within the same Flood Risk Zone as the appeal development. I do not have the full details of the circumstances that led to these schemes being accepted and cannot therefore be certain that they represent a direct parallel to the proposal before me. However, in any event, these particular approvals do not provide justification for the proposed development, in light of the harm which I have identified.
19. Having regard to the available information and in the absence of substantive evidence to the contrary, I conclude on this main issue that the proposal would not represent an acceptable form of development, by reason of its location in a high risk flood area. It would therefore be contrary to LP Policy ENV5, but also the Framework (paragraphs 155-165) and the PPG on Flood risk and coastal change.

Other Matters

20. The appeal site lies within the setting of a number of statutory listed buildings, which include the cottages fronting Brandy Lane. No concerns were raised by the Council in that particular regard, and there are no reasons for me to take a different view.
21. I note that a planning application² for the erection of a dwellinghouse has previously been approved by the Council. In the absence of further details, it is difficult to make a direct comparison with the appeal scheme, but this permission would have been issued in a very different planning context, both at a local and national level, and is therefore of limited relevance for the consideration of the present appeal.

Heritage Balance

22. The appeal development would cause less than substantial harm to the significance of the Underhill Conservation Area, to which I ascribe considerable importance and great weight. The identified harm should therefore be weighed against the public benefits of the proposal, in accordance with paragraph 196 of the Framework. The proposed dwelling would notably make a modest contribution to housing supply and choice. However, the public benefits that have been brought to my attention would be outweighed by the harm which would be caused to the Underhill Conservation Area.

² Local Planning Authority Reference 89/00892/FUL.

Planning Balance

23. The Council is presently unable to demonstrate a five-year supply of deliverable housing sites, although little evidence has been brought to my attention regarding the extent of the shortfall. In such circumstances, paragraph 11 d) of the Framework states that planning permission should be granted, unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. As detailed within footnote 6, these areas and assets of particular importance include designated heritage assets. As I have found that the proposal would fail to preserve the character and appearance of the Underhill Conservation Area, the application of policies in the Framework provide a clear reason for refusing the proposal in this particular instance. Consequently, the presumption in favour of sustainable development does not apply in this case.

Conclusion

24. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR