



Appeal Decision

Site visit made on 25 February 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021.

Appeal Ref: APP/X2220/W/20/3254684

Land adjoining 22 Belvedere Gardens, Deal, CT14 9XU

- The appeal is made under section 78 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 Eason against Dover District Council.
 - The application Ref DOV/20/00403, is dated 14 April 2020.
 - The development proposed is the erection of a two-bedroom bungalow and associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a two-bedroom bungalow and associated parking on land adjoining 22 Belvedere Gardens, Deal, CT14 9XU in accordance with the terms of the application, Ref DOV/20/00403, dated 14 April 2020, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the submitted drawing EB/1001/PD/103 Revision AB.
 - 2) Prior to the first occupation of the dwelling, the proposed means of disposing of foul water drainage and surface water run-off from the development shall be completed in accordance with the submitted details and retained as such thereafter.
 - 3) Prior to the first occupation of the dwelling, the parking bay shown on the approved drawing shall be provided on the site and thereafter shall be retained for that purpose.
 - 4) 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 further hard surfaces, fences, walls or means of enclosure shall be formed, erected or constructed on the site.

Application for costs

2. An application for costs was made by Mr Eason against Dover District Council. This application is the subject of a separate Decision.

Preliminary matters

3. The Planning Committee decided that, had they been in a position to decide the application, it would have refused planning permission for the following reason: *"The proposed development by reason of its design, scale, appearance and location (would) be an incongruous form of development in its context that would harm the character and appearance of the area, contrary to Paragraphs 124, 127 and 130 of the National Planning Policy Framework."*

Main Issue

4. The main issue in this case is the design, scale and appearance in relation to the character and appearance of the surrounding area.

Reasons

The site and surroundings

5. Belvedere Gardens is a recent development of mainly chalet bungalows, that runs from the end of Dola Avenue. It is a cul-de-sac with development only on the north west side, the south east side being formed by the rear boundaries of dwellings fronting Middle Deal Road. The appeal site is at the turning head at the closed end of the street, next to 2 recently constructed 2 storey houses, Nos.42 and 44, at the head of another cul-de-sac named Foster Way. The appeal site is the side garden of No.22 Belvedere Gardens. The existing chalet bungalow at No.22 has a short rear garden, repeating the form of the rest of the dwellings in the row. The appeal dwelling would have front and rear building lines that continue those of the existing chalets.
6. The appeal site currently has an almost complete building on it which, as far as I can tell, is equal in size to the bungalow proposed, with a similar low pitched roof. This building was apparently the subject of a Lawful Development Certificate which was issued under application DOV/20/00227 in 2020.

The previous appeals

7. At this point I should refer to previous appeals, on the same site as in this case, that were dismissed under the reference APP/X2220/W/18/3195631 and 3197151. Those appeals were in respect a single storey 2 bedroom bungalow and a 2 bedroom chalet bungalow. The latter proposed to take vehicular access off the end of Foster Way. I can set out the Inspector's decisions in that case, in brief.
8. The proposed single storey bungalow was found to contrast with the surrounding development in Foster Way in that it would be lower. Whilst the wall that forms the boundary to Foster Way would limit views into the site, the roof of the proposed bungalow would be visible and would appear incongruous between the two storey houses at 42-44 Foster Way and chalet bungalows in Belvedere Avenue and at 27 Foster Way. At the same time, this bungalow was found not to materially affect the living conditions of the occupiers of No.44. As a result, it was found to harm the character and appearance of the area, and was dismissed for that reason.

9. The proposed chalet bungalow was found to reflect the scale and appearance of neighbouring development, and the entrance from Foster Way meant that it would relate to neighbouring buildings in that road. However, this chalet bungalow would have a side gable facing the boundary of No.44 and would dominate the front garden of that property and its front windows. The chalet bungalow appeal was thus dismissed on the basis that it would result in harm to the living conditions of the occupiers of No.44.
10. The Inspector also noted that the appellant's case included reference to what might be constructed under permitted development rights, but little weight could be attached to such possibility as there was insufficient evidence, such as a certificate under Section 192 of the Town and Country Planning Act 1990, had been provided. Nevertheless, he noted that his decision did not mean that development of the site would be unacceptable in principle. The certificate referred to has now been obtained, as referred to in paragraph 6 above, and the building to which it refers appears to have been constructed. Of course, this certificate does not authorise the appeal bungalow.

The design, scale and appearance in relation to the character and appearance of the surrounding area

11. Since the existing building on site appears to be on essentially the same footprint and with a roof as in the appeal proposal, it is possible to make a visual assessment of its effect on the character and appearance of the surrounding area. In addition, there has been a wall erected on the boundary alongside No.44 Foster Way. This new wall, and the one that runs across the back of the site, at the rear of the Foster Way hammerhead, effectively screen the new building from Foster Way. The gable of the roof is all that can be seen across the rear wall, whilst from an oblique angle across the entrance to the parking area of No.44, a little more is seen of the flank, but I find no incongruity with the pre-existing development in Foster way. I note that a similar conclusion was reached by a planning officer in an earlier committee report, as quoted in the appellant's response statement.
12. As to the visual effect at the end of Belvedere Gardens, the materials used in the new building, with roof covering and contrasting brickwork details, reflect those of the chalet bungalows. Of course the roof pitch is lower, since there is no upper level and no dormer windows have to be accommodated; additionally the shallower pitch reduces any impact on the Foster Way properties. It is apparent that there are 2 other bungalows at the other end of the Belvedere Gardens development that are of the same design that have previously been found acceptable; I have no reason to disagree with that previous judgement.
13. I conclude that the design, scale and appearance of the appeal proposal would not have a harmful effect on the character and appearance of the surrounding area. The proposal would not conflict with policies of the development plan or of the National Planning Policy Framework.
14. It will be seen that I have come to a different conclusion to that of the previous Inspector with regard to its physical relationship with the 2 storey houses at 42 and 44 Foster Way and the chalet bungalows in Belvedere Gardens. However, I have had the advantage of making a judgement on the basis of what can actually be seen in its context, and this has led me to conclude as I have.

Other matters

15. The site is located within the area where development is likely to have a significant effect on the Thanet Coast and Sandwich Bay Special Protection Area (SPA). The council states that, applying a precautionary approach and with the best scientific knowledge in the field, it is not currently possible to discount the potential for housing development within the district to have an adverse effect on the integrity of the protected SPA and Ramsar sites.
16. The Thanet Coast and Sandwich Bay SPA and Ramsar Mitigation Strategy was agreed with Natural England in 2012 and is considered to be effective in preventing or reducing the harmful effects of housing development on the sites. For proposed housing developments in excess of 14 dwellings the SPA requires the applicant to contribute to the Strategy in accordance with a published schedule. Having regard to the proposed mitigation measures and the level of contribution currently acquired from larger developments, the council considers that the proposal would not have an adverse effect on the integrity of the SPA and Ramsar sites. The mitigation measures will ensure that the harmful effects on the designated site, caused by recreational activities from existing and new residents, will be effectively managed. I agree with that conclusion.

Conditions

17. The council has suggested a number of conditions that it would wish to see imposed on any planning permission for the appeal development. I am imposing 3 these, amending the wording where necessary to accord with good practice and national guidance, for the following reasons: condition 1 is for clarity and the avoidance of doubt; condition 2 is for the reason that I explain below; condition 3 is to ensure an off street parking space is provided, so as to avoid obstruction of the highway in the interests of safety and convenience of road users; and condition 4 is to control the erection of any addition means of enclosure that might be harmful to the living conditions of neighbouring occupiers.
18. The appellant objects to the suggested condition 2, that the proposed means of disposing of foul water drainage and surface water run-off from the development shall be completed in accordance with the submitted details, on the basis that Southern Water has approved the arrangements. However, this condition is not concerned with approving details, but is ensuring that this part of the scheme is implemented as proposed. I regard it as a reasonable condition, and not onerous, necessary to ensure that foul and surface water drainage is satisfactorily. I will impose it for this reason.
19. Objection is also raised to a proposed condition which seeks to remove permitted development rights under Classes A to F of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. I am told that such a condition was not imposed on the present Belvedere Gardens development. Since by the nature of the development there is very limited scope for what could be achieved under these rights, I regard the condition as unnecessary and I will not impose it.

20. Whilst there is the existing building on site that appears to be largely a development that fulfils the aim of the appeal application, clearly its construction was not undertaken in accordance with the permission that I am granting. Since the council has not sought the standard time limit, presumably it is content that a material start on the development has been made. Therefore I am not imposing the standard time limit, and in any event, the legislation provides a fall-back limit.

Terrence Kemmann-Lane

INSPECTOR