
Appeal Decision

Site visit made on 18 May 2021

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 14 June 2021

Appeal Ref: APP/Z2260/W/20/3260064

The Lord Nelson, 11 Nelson Place, Broadstairs CT10 1HQ

- 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 Sequest Properties Ltd against the decision of Thanet District Council.
 - The application Ref F/TH/20/0574, dated 24 April 2020, was refused by the Council by notice dated 31 July 2020.
 - The development proposed is erection of part 4 storey, part 3 storey and part single storey building consisting of 1No 3 bed maisonette, 3No 2bed maisonette, 1No 1bed maisonette and 1No 2 bed flat together with bin and cycle store following demolition of existing Public House and associated structures.
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Decision

1. I allow the appeal and grant planning permission for erection of part 4 storey, part 3 storey and part single storey building consisting of 1No 3 bed maisonette, 3No 2bed maisonette, 1No 1bed maisonette and 1No 2 bed flat together with bin and cycle store following demolition of existing Public House and associated structures at The Lord Nelson, 11 Nelson Place, Broadstairs CT10 1HQ in accordance with the terms of the application, Ref F/TH/20/0574, dated 24 April 2020, subject to conditions 1) to 13) on the attached schedule.

Main Issues

2. These are;
 - The effect of the proposal on the character and appearance of the Broadstairs Conservation Area.
 - The effect of the proposal on the Thanet Coast and Sandwich Bay Special Protection Area and Sandwich Bay and Hacklinge Marshes Site of Special Scientific Interest.

Reasons

3. There have been 2 previous Appeals for works at the site of the former public house.
 - That in 2015¹ was for change of use to 5 flats together with a 3-storey extension and whilst the Inspector found less-than-substantial harm to the conservation area, the conclusion was that the benefits of bringing the

¹ Reference APP/Z2260/W/15/3016558 dated 17 August 2015

disused building back into use outweighed that harm, and permission was granted.

- That in 2019² was for complete demolition and replacement with a new part 3-storey and part 4-storey building containing 5 flats and a 2-bed dwelling house, and whilst less-than-substantial harm was found, in the balance of that Decision, the benefits were found not to outweigh the harm and the appeal was dismissed.
4. These previous Appeal Decisions and the reasoning that led to them are matters of substantial weight.

Character and Appearance

5. Thanet Local Plan Policy HE02 concerns development in conservation areas and is consistent with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Policy HE03 contains requirements on heritage assets, including non-designated, or 'local' heritage assets.
6. The Broadstairs and St Peter's Neighbourhood Plan has been subject to a referendum which was in favour of the Plan. As a result, significant weight can be attached to the Plan as it should be 'made' within 8 weeks of the referendum and become part of the Development Plan. Policy BSP8 sets out requirements for local heritage assets and Policy BSP9 concerns design where proposals that reflect the design characteristics of the area and have taken account of the guidelines in Appendix 5 will be supported.
7. Appendix 4 to that Plan is a list of 'local heritage assets' and includes number 11 (Lord Nelson PH). On that basis the building should be regarded as a non-designated heritage asset, and section 16 of the Framework contains policies on all heritage assets, as well as policies which differentiate between non-designated and designated assets. Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and that applies to the conservation area, while paragraph 197 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application.
8. The building as seen at the site inspection was in poor condition with missing roof coverings and the appellant's submissions indicate damage that can be attributed at least in part to that ongoing problem. Paragraph 191 of the Framework states that where there is evidence of deliberate neglect of, or damage to, a heritage asset, the deteriorated state of the heritage asset should not be taken into account in any decision. That section refers to any class of asset, and although it is not productive in this Decision to lay blame, efforts could have been made to secure the building. In addition, the appellant's claim as to the viability of retention, as allowed in the 2015 Appeal but never implemented, are not backed by detailed costings, and questions remain as to the costs had the building been better secured from the weather.
9. The 2015 Appeal Decision did not have to reach any conclusion on the contribution of the main building to the conservation area as that proposal was

² Reference APP/Z2260/A/18/3204607 dated 17 July 2019

- for its retention, but the Inspector did find the lower corner and side elements to be neutral in their contribution, and that the proposed development would have a neutral effect, concluding that the character and appearance would be preserved. Notwithstanding the South Lakeland judgement, the Inspector then found less-than-substantial harm but with benefits that outweighed the harm.
10. The 2019 Appeal Decision did not identify the building as a non-designated heritage asset, although that finding would have been open to the Inspector under the then current Framework, but that Decision pre-dated the Referendum that has raised the status of the Neighbourhood Plan and Appendix 4. The concern which led to the appeal being dismissed was over the design of the replacement rather than the loss of the original.
 11. The character and appearance of the conservation area and the nature of the surrounding townscape appears not to differ significantly from that described by the previous Inspectors and does not need repeating. As with the Inspector's findings in 2019, the existing building forms a feature in the street scene which would have distinguished the public house from the residential properties, but that use appears to have ended, change of use was granted in 2015 following an analysis of the remaining establishments in the vicinity, and the Council takes no issue with the loss of that use.
 12. The proposed replacement building would however replicate some of the traditional elements of the original building, and would introduce a number of more modern features, again as observed in 2019, but at that time the Inspector expressed particular concern over the glazed balconies to the otherwise traditionally proportioned left hand element, and over the width of the more contemporary right hand building, extending to Devonshire Place at full height.
 13. The present appeal proposal is for a similar traditionally proportioned left-hand building but without the balconies, and this would be an acceptable addition to the street-scene in replacement for the tall original part, while the lower parts referred to in the 2015 Appeal would now be replaced with a less wide and more sympathetically proportioned contemporary element, and a low range onto Devonshire Place and round to the rear. That would be an acceptable arrangement that would provide a buffer to the traditional terrace on the far side of that road and would hark-back to the previous non-residential use of that part of the site. This arrangement would also be very similar to that found acceptable in the 2015 Appeal Decision.
 14. Reference has been made to the extensive flint wall to the rear elevation, and the Conservation Officers identifies this as a particular feature worthy of retention. The appellant offers retention or replication and considers that it could be the subject of a condition. That offer should be accepted as tying the new works more firmly with that previous use and building, acknowledging the use of flint in the vicinity.
 15. With those provisions, the replacement of the buildings on the site with new buildings designed to respond appropriately to the context would as near as necessary replicate the proportions and detailing of the original left hand part while adding a contemporary right hand part to mediate between this site and that to the far side of Devonshire Place without falling into the trap of pastiche or historically inaccurate copy.

16. In the balance required under paragraph 197 of the Framework, the benefit of modern construction in providing good thermal and sound attenuating properties outweighs the harm of removing the structure of the locally listed building, whose conversion would likely not provide the same level of comfort or attention to climate change.
17. Turning to the designated heritage asset, the effect on the character and appearance of the conservation area would be neutral, having regard to the apparent nature of the original building prior to its dilapidation, and in line with the South Lakeland judgement, would satisfy the requirements of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
18. The proposal would accord with the Development Plan and other policies previously cited and subject to the conclusions in the following main issue, permission should not be withheld.

Special Protection Area and Site of Special Scientific Interest

19. Local Plan Policy SP29 states that all proposals for new residential development will be required to comply with the Strategic Access Management and Monitoring Plan in order to mitigate against the in-combination effects of new development, through the pathway of recreational pressure on the Thanet Coast Special Protection Area and Ramsar site.
20. Paragraphs 176 and 177 of the National Planning Policy Framework set out requirements for the protection of habitats and development that is found to have a significant adverse effect.
21. The proposal would replace a non-residential building with 6 dwellings and hence there would be an increase in units on the site. This and the proximity to the protected areas could lead to a risk of increased recreational use and harm occurring.
22. The Inspector is the Competent Authority at appeal and a Habitats Regulation Assessment is required. The proposal is not directly connected with or necessary to the management of the protected site, and for the reasons set out above, the proposal is likely to have a significant effect on the interest features of the site, alone or in combination through recreational visits and use. In view of these findings, an Appropriate Assessment needs to be carried out. The risks could be satisfactorily mitigated through the signed Undertaking, to secure contributions towards the Strategic Access Management and Monitoring Plan, the figure of £1,906 being that referred to in the Officer's Report, and there is no need to continue with the Assessment.
23. The contribution towards mitigation is necessary to make the development acceptable and would be fairly and reasonably related to the scale and nature of the proposed development. As a result, the proposal would not adversely affect the integrity of the Special Protection Area and the Site of Special Scientific Interest and would accord with Policy SP29 and the Framework.

Conditions and Undertaking

24. The Council has suggested conditions controlling materials and windows, railings and balustrades, as well as rainwater goods, landscaping and refuse and recycling stores. These conditions are reasonable and necessary to ensure

the quality of the development in this prominent location within the conservation area.

25. The County Council Archaeologist had requested conditions requiring a watching brief of below ground excavations, as artifacts had been found in previous nearby sites, and that is the correct level of intervention in this case. A further condition was requested to record the architectural details, and in view of the loss of the original building, that would assist the historical record of the area. Both need to be pre-commencement by their nature and the appellant agreed that by e-mail dated 24 May 2021, as required by Regulation 2(4) Notice of The Town and Country Planning (Pre-commencement Conditions) Regulations 2018.
26. As previously stated, it is reasonable to request proposals for the retention or replication of the flint wall to the rear of the original building. A condition naming the 'as proposed' drawings is required for the avoidance of doubt
27. The Undertaking signed and dated 20 May 2021 has been given full weight in the second main issue and is necessary to allow the development to proceed.

Conclusions

28. The proposal would provide additional housing in line with the statement in paragraph 59 of the Framework of significantly boosting the supply and would make better use of land in the urban area. The loss of the public house use is acceptable as is the loss of the original building having regard to the design of the replacement. The scheme would preserve the character and appearance of the conservation area and would accord with the local and national policies on heritage and design previously cited.
29. The integrity of the Special Protection Area and Site of Special Scientific Interest is secured by contributions to the Strategic Access Management and Monitoring Plan.
30. The Council's housing land supply situation and the results of the delivery test add weight to the conclusion that, for the reasons given above, the appeal should be allowed.

S J Papworth

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the submitted plans numbered 276/100 A, 276/101 B and 276/102 A received 20 May 2020.
- 3) Prior to the commencement of development hereby permitted, the applicant, or their agents or successors in title, shall secure the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification, which has been submitted to and approved in writing by the Local Planning Authority.
- 4) Prior to the commencement of development hereby permitted the applicant, or their agent or successors in title, shall secure the implementation of a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.
- 5) The external surfaces of the development hereby approved, other than as provided for pursuant to Condition 5) above, shall be finished in accordance with the material schedule as annotated and illustrated on approved plan numbered 276/101 B received 20 May 2020.
- 6) Notwithstanding the details shown on the drawings and the requirements of Condition 5) above, no works of demolition or construction to the rear shall be carried out until a scheme for the retention of the flint wall, or its replication using reclaimed flints has been submitted to and approved in writing by the Local Planning Authority and the development of that part shall be carried out in accordance with that scheme and the materials so approved.
- 7) Prior to the construction of the external surfaces of the development hereby approved samples of the materials (excluding the windows, doors, railings and balustrading) to be used shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved samples.
- 8) All new windows and doors shall be timber and set within a reveal of not less than 100mm.
- 9) Prior to the installation of any external windows and doors, joinery details at a scale of 1:5 of the windows and doors to include sections through glazing bars, frames and mouldings shall be submitted to and approved in writing by the Local Planning Authority. Such details as are approved shall be carried out concurrently with the development and fully implemented prior to the first occupation of any part of the approved development.
- 10) Prior to the installation of the railings and balustrading, details of the colour and finish shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

- 11) Prior to the installation of the rainwater goods, details including the material and a sectional profile shall be submitted to and approved in writing by the local planning authority. The rainwater goods shall be installed in accordance with the approved details.
- 12) Prior to the first occupation of the development hereby approved, full details of both hard and soft landscape works, to include:
 - Species, size and location of new trees, shrubs, hedges and grassed areas to be planted.
 - The treatment proposed for all hard-surfaced areas beyond the limits of the highway.
 - Walls, fences and other means of enclosure proposed.Shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved details.

The works shall be carried out prior to the first occupation of any part of the development, or in accordance with a programme of works to be agreed in writing with the Local Planning Authority. Any trees or plants which within a period of 5 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.
- 13) The enclosed refuse stores and cycle storage area as shown on the approved plans numbered 267/100 A and 267-102 A received 20 May 2020 shall be provided prior to the first occupation of the development hereby permitted and thereafter maintained for that purpose.