



Appeal Decision

Site visit made on 27 July 2021

by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/J2210/W/20/3271141

26 Western Esplanade, Herne Bay CT6 8RW

- 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 Meakin and Ms Jackson against the decision of Canterbury City Council.
 - The application Ref CA/20/00255, dated 27 January 2020, was refused by notice dated 20 March 2020.
 - The development proposed is demolition of existing garage. New detached dwelling with associated parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposal on the character and appearance of the appeal site and the local area; and
 - The lack of a signed and completed Unilateral Undertaking (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 (As Amended).

Procedural Matters

3. Since Canterbury City Council's (the Council) refusal of the application Ref CA/20/00255 the Government published a revised National Planning Policy Framework. In line with Planning Practice Guidance, my consideration of the issues of this appeal has, therefore, been on the basis of the National Planning Policy Framework (2021) (the Framework) and the Canterbury District Local Plan (2017) (the Local Plan). Neither the appellant nor the Council have indicated that this is prejudicial to their cases.

Reasons

Character and Appearance

4. 26 Western Esplanade (No.26) is a generously proportioned two storey detached dwelling located on the Esplanade and faces the sea. It sits on a corner plot located at the junction of the Esplanade with Bournemouth Drive and No.26 is at one end of 3 similarly scaled two storey dwellings.

5. The wider local area is residential and is made up of 1 to 3 storey dwellings that demonstrate a wide variety of styles from late 19th Century to immediately contemporary seaside villas, on varying sized plots, with varying side spaces between boundaries and buildings.
6. Western Esplanade demonstrates this full variety of architectural styles and plot sizes along its length; however, No.26 sits on a significantly wider plot than most and is significantly wider than those in its group of 3, with a particularly wide side garden between No.26 and its neighbour at 27 Western Esplanade (No.27).
7. The proposal is for a detached 2 storey, 4 bedroom dwelling, of a traditional form with a pitched roof, with living accommodation at loft level. Following the demolition of the existing garage attached to the side of No.26, this would sit in what is currently the side garden. The front elevation of the proposed dwelling would align with that of No.26, but the proposed dwelling would project further rearward than both No.26 and No.27.
8. The subdivision of the appeal site would create two plots with two separate dwellings sitting in with their own curtilage with their own dedicated front and rear gardens. The proposed plot for the appeal dwelling would be narrower than that of No.26, which would have a substantial reduction in the size of its gardens. However, the proposal would allow for good sized front and rear gardens for both No.26 and the proposed new dwelling.
9. The proposed dwelling would not be as wide as that at No.26 but would appear to be in proportion and to reflect the scale and proportion of other similar detached two storey houses in the local area, including on the Esplanade, and would not appear unduly narrow. The proposed plot width for a dwelling of the scale proposed would also reflect the width of plots for similar sized properties in the wider area including the Esplanade, which demonstrates a variety of plot widths along its length.
10. The existing side garden does not reflect the general streetscape of Western Esplanade. Dwellings here generally fill more of the width of their plots and the side spaces between buildings and from buildings to boundaries are generally narrower. This leaves a gap in the street frontage on Western Esplanade between No.26 and No.27 that does not reflect the streetscene of this road, where properties have been developed relatively closely.
11. The proposal would result in side spaces of around 2.5 Metres between the proposed dwelling and No.26 and No.27. From my site visit this would appear to be reflective of the average side space between buildings and boundaries evident along the length of the Esplanade and apparently greater than many. This accords with the side space measurements that the appellant has provided for the purposes of this appeal.
12. For these reasons I find that the proposal would sit comfortably within the context of the group of 3 existing houses, reflecting the design typologies and streetscene of Western Esplanade and the wider area. The proposal would not, therefore, result in harm to the character or appearance of the appeal site or that of the local area. The proposal would therefore accord with Policies DBE3 of the Local Plan and Paragraph 130 of the Framework, which seek to ensure that developments are of a high quality design with the objective of achieving well-designed places.

Planning Obligations

13. The National Planning Policy Framework (2019) (the Framework) sets out that a local planning authority should use planning obligations only where it is not possible to address unacceptable impacts of a development through a planning condition and only where they are necessary to make it acceptable, directly related to it and fairly and reasonably related in scale and kind.
14. The Council's decision notice sets out that the second reason for their refusal of the planning permission was that a signed and completed (UU) to secure the delivery of necessary measures to mitigate the impacts on the proposed development on the Thanet Coast and Sandwich Bay Special Protection Area (the SPA) had not been provided to them by the appellant. Without this UU the proposed development would be contrary to the provisions of the Habitat Regulations and Directive (HRD).
15. The appellant has now submitted to me a signed and completed (UU), intended to set out their agreement to the payment of a £848 contribution towards the Thanet Coast and Sandwich Bay Strategic Access Management and Monitoring (SAMM) Strategy, in accordance with Policy LB5 of the Local Plan, which makes provision for payments for mitigation and avoidance measures relating to impact on the SPA. This sum was arrived at through the Council's Appropriate Assessment in line with the HRD and was agreed with the appellant.
16. The Council has brought to my attention that headings in the submitted UU have been struck through and that the payment to the Council's costs for the completion of the UU, as required by paragraph 5.2.3 of the UU, has not been received. This payment is, however, a matter for the Council to pursue and is not a matter that I need to consider. Although the headings do appear to have been struck out, the appellant sets out that this is an error in duplication of the original. However, it is of no matter, as the provisions under these headings remain as part of the submitted UU.
17. I am satisfied that the requirement for the UU meets the 3 tests set out in paragraph 57 of the Framework. The provisions of the submitted UU have been given significant weight in my considerations. However, the submitted UU sets out that the trigger for the payment of the required contribution is a planning permission granted by the Council. As the planning permission granted on appeal forms part of the appeal decision letter and is not issued by the Council, this trigger for payment in the submitted UU could not be met by my allowing the appeal. As such, the UU would not be effective in achieving what is intended, without which, the proposal would result in material planning harm.
18. Accordingly, I conclude that the submitted UU is incomplete and could not take effect and secure the appropriate mitigation and avoidance measures required in accordance with the Council's adopted policies. This renders the proposal in conflict with the requirements of Policies SP1, SP6 and LB5 of the Local Plan and Section 15 of the Framework that collectively seek sustainable development that conserves and enhances the natural environment.

Planning Balance and Conclusion

19. I find that the public benefits associated with the provision of a single dwelling in the Council area would be minimal. When set alongside the lack of a completed UU concerning the provision for the appropriate mitigation and

avoidance measures required in accordance with the Council's adopted policies, the harmful impact of the development would, demonstrably outweigh these benefits. As a result, and having had regard to all other matters raised, I conclude that the appeal be dismissed.

Victor Callister

INSPECTOR