



Appeal Decision

Site visit made on 24 November 2021

by David Wallis BSc (HONS) PG DipEP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2021

Appeal Ref: APP/J2210/W/20/3265289
39 Oxford Street, Whitstable CT5 1DB

- 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 Roy Stephens against the decision of Canterbury City Council.
 - The application Ref CA/20/1736, dated 12 August 2020, was refused by notice dated 10 November 2020.
 - The development proposed is change of use from retail to residential at first floor together with first floor rear extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development as it appears on the application form is not used on the Council's decision notice. Nonetheless, I do not consider that either party is prejudiced by my using of the description as per the decision notice, which sets out clearly the development applied for.

Main Issues

3. The main issues for the appeal are:
 - whether or not the proposal preserves or enhances the character or appearance of designated and undesignated heritage assets;
 - the effect upon the living conditions of neighbouring occupiers with particular regard to outlook; and
 - the effect upon the integrity of the Thanet Coast and Sandwich Bay Special Protection Area and the Thames, Medway and Swale Special Protection Area (the SPAs).

Reasons

Heritage Assets

4. Section 66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) sets out that special regard shall be had to the desirability of preserving the special interest of a listed building or its setting. Section 72 of the Act states special attention shall be paid to the

desirability of preserving or enhancing the character or appearance of a Conservation Area.

5. The appeal site is in a prominent position within the Whitstable Conservation Area, fronting onto Oxford Street close to the High Street. It is a mid-terrace property adjoining a grade II listed public house and a locally listed building. Whilst the appeal site itself currently shares little visual characteristics with the historic environment that surrounds it, the building is highly visible in the public realm and therefore contributes towards the local sense of place.
6. The appeal development would take place primarily at the rear of the building, comprising a first-floor extension with an asymmetrical pitched roof. The gable end of that extension would be higher than the existing flat roof element being retained on the building's frontage. Timber sliding sash windows would be applied to the front elevation, whilst uPVC fascia boards and water goods would be used on the extended part of the building. The flanks of the proposed extension, whilst partially obscured by the existing public house, would be visible from Oxford Street and the forecourt to Whitstable Library.
7. From my site visit, I noted that there is a multitude of roof forms and pitches both in the immediate vicinity of the appeal site and across the Conservation Area as a whole. However, a common pattern was visible insofar as the part of each building that fronted the public highway was typically higher than any rear projections, reflective of a historic hierarchy of importance between front and rear facades. The proposed asymmetric roof would rise above the roof of the appeal building and would compete in height with the adjacent listed and locally listed buildings. This would starkly contrast with the form and appearance of development in the historic setting and would appear alien in the street scene.
8. Furthermore, the uPVC fixtures, visible from the public domain from the communal area outside the library, represent an insensitive modern feature that detracts from the character and appearance of the historic environment. The use of this material is not justified in this instance.
9. I acknowledge that the proposals were revised in consultation with the Council over time, but the plans before me show a built form that would harm the character and appearance of the designated and undesignated heritage assets. This harm, in my view, would be considered to be 'less than substantial' when assessed against paragraphs 201 and 202 of the National Planning Policy Framework.
10. Less than substantial harm may be outweighed by public benefits, though in this case the formation of a single dwelling would carry very limited economic and social benefit to the local area. There would be some public benefit in replacing a proportion of the large frontage glazing with timber sash windows, enhancing the building's appearance in the street scene. In addition, the proposed roof would remove the existing flat roof element to the rear of the appeal site, rationalising the roof form in this area. However, when taken as a whole, the overall total of alterations to the building would not respect the pattern or appearance of development within the Conservation Area and would harm the appearance of other local heritage assets. Since great weight should be given to the asset's conservation, I conclude that the public benefits would not outweigh the level of harm caused by the proposed development.

11. On this basis, the proposal would not preserve or enhance the character or appearance of the Conservation Area and would adversely affect the setting of adjoining heritage assets. This would be contrary to policies DBE3, DBE6, HE1, HE4, HE5, HE6 and HE8 of the Canterbury District Local Plan 2017 (the LP) that together seek to protect, conserve and enhance the historic environment.

Living Conditions

12. The rear of the appeal site, together with adjoining and adjacent premises, is a very compact urban environment, enclosed by buildings and facades of varying height, form and bulk. I noted from my site visit that there is a small garden area at the rear of No.41 Oxford Street to the south of the appeal site and also a small number of ground and first floor windows that look onto the appeal site from Nos. 41 and 43 Oxford Street. Whilst views from these properties are already constrained, they do enjoy some degree of outlook because of views to the sky.
13. The proposal would see a deep rear extension at first floor level, made taller because of a high-pitched roof. The flank wall of the appeal building abuts the shared boundary with No.41 and would be raised up as part of the proposed development, reducing the amount of sky visible to that neighbour. The extension would also be directly in views from windows in the flank of No.43.
14. The proposed extension would exacerbate the oppressive urban environment for the adjacent properties, creating worse living conditions for the residents therein. Views from windows in the rear of No.41 would be obstructed and tunnelled as a result of the proposal, resulting in an overbearing impact to the detriment of the enjoyment of that adjoining property. The absence of public objections on this ground does not reduce the proposal's physical effects to any degree.
15. I conclude the proposal would cause harm to the living conditions of the adjoining occupier by way of an overbearing impact causing a detrimental loss of outlook. This would be contrary to policies DBE3 and DBE6 of the LP, that seek to avoid unacceptable impacts upon the amenities of neighbouring properties.

Integrity of the SPAs

16. In 2018 the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site¹, must consider mitigation within the Framework of an Appropriate Assessment rather than at the screening stage. This responsibility now falls to me within this appeal.
17. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the European sites.
18. The appeal site falls within 6km of two SPAs. The sites are designated at European level for their environmental importance, providing habitats for wintering birds, wildfowl and wading birds. The site is used for public recreation and so the proposal, when considered alone or in combination with other schemes, could have significant effects on the quality features of interest of the SPAs due to the increased recreational use.

¹ Now the National Site Network following withdrawal from the EU

19. When concluding that the scheme, either alone or in combination with other schemes, would have a significant effect on the quality features of interest of the identified European sites, it is incumbent upon me to undertake an Appropriate Assessment.
20. Whilst the main parties agree that mitigation should be provided in the form of a financial contribution, the appellant has not secured any mechanism for paying such contributions and no obligation has been submitted to the appeal.
21. Since I am dismissing on other grounds, I do not need to undergo the task of Appropriate Assessment in this instance. Nonetheless, on the evidence before me I can only conclude that, in the absence of necessary mitigation, the proposal would have an adverse effect on the integrity of the designated sites contrary to policies SP1, SP6, LB5 and LB9 of the LP, that give the highest level of protection for internationally designated sites of biodiversity interest.

Other Matters

22. I note imagery provided suggesting the appeal building was taller in the past, but the proposal is not one to restore the building to any previous form and must be considered in the context of the site as it stands today. The development of the airspace above the existing property, for the reasons identified above, would not represent an effective or efficient use.
23. The evidence before me suggests there is no objection in principle to the proposed change of use of the appeal site and that the location is in a highly accessible location with good access to shops, services and transport. However, these matters would not justify a departure from the Development Plan in this instance.

Conclusion

24. For the reasons given above, the appeal is dismissed.

David Wallis

INSPECTOR