



Appeal Decision

Site visit made on 16 November 2021

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/X2220/W/21/3276782

Land on the east side of Western Road, Deal CT14 6RX

- 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 Paul Goodsir against the decision of Dover District Council.
 - The application Ref 20/01025, dated 9 September 2020, was refused by notice dated 9 December 2020.
 - The development proposed is demolition of existing buildings and erection of 5 nos terraced dwellings with associated landscaping, waste/recycling storage, cycle storage, car parking and vehicular access (through retained boundary wall).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Planning law requires that applications for planning permission be determined in accordance with the development plan for the area, unless material considerations indicate otherwise. The National Planning Policy Framework (the Framework) is a material consideration. In this case, the Council have not referenced any development plan policies in their reasons for refusal. However, policies from the Dover Core Strategy are mentioned in both the Council's officer report and the Appellant's evidence, in addition to saved policies in the Dover Local Plan. I have paid regard to development plan policy insofar as it has been brought to my attention.
3. Heritage assets within the vicinity of the site are noted. In particular, the adjacent Nelson Street Conservation Area (Conservation Area) and nearby Grade II Listed Church of St Andrew. In deciding this appeal I have paid special regard to the statutory duties relating to heritage assets¹.
4. The Appellant submitted revised drawings with the appeal that are said to show the removal of raised deck areas and an amendment to the access and car parking layout. In addition, swept path analysis drawings referred to in the Appellant's statement were not submitted along with the appeal in the Appellant's error. A subsequent request for inclusion of the drawings was made by the Appellant.

¹ S66(1) and S72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

5. Paying regard to the comments received from other interested parties, including their areas of interest, I am of the opinion that the details set out above are matters that the local community are likely to wish to express a view on. Accepting the details as part of the appeal would therefore limit their opportunity to do so. Accepting them would also be contrary to the general principle that a better way to amend a proposal, in the interests of all parties, is to make a fresh planning application. As such, in the interests of fairness and paying regard to the guidance in Annex M of the Appeals Procedure Guide², I have not taken account of the additional drawings in reaching a conclusion.
6. Following submission of the appeal, the Council granted planning permission for the erection of 3 detached dwellings on the site³ (2021 permission). The Council and the Appellant were both given an opportunity to comment on this matter. The Appellant's request for me to consider additional technical evidence relating to sequential testing and trees as part of this appeal was declined, although the absence of the evidence has not materially changed my conclusions in relation to either of the relevant issues.
7. I am, however, satisfied that the 2021 permission represents a legitimate fall back position and is a material consideration. As such, I have paid regard to it.

Main Issues

8. The main issues are:
 - The effect on nearby heritage assets, including the character and appearance of the Conservation Area.
 - Whether safe and suitable access would be provided, and any consequent effect on highway safety.
 - The effect on the living conditions of occupiers nearby, with particular reference to properties at 24-34 Western Road.
 - The effect on local trees.
 - Whether the proposal appropriately satisfies the sequential test in the Framework, in particular by demonstrating that no sequentially preferable sites are reasonably available in areas with lower risks of flooding.

Reasons

Heritage assets

9. The Council have identified the heritage assets that might be affected by the proposal. They express concerns about harm to the significance of the Conservation Area.

² <https://www.gov.uk/government/publications/planning-appeals-procedural-guide>

³ Council reference – 21/0113

10. The Appellant has provided limited evidence in terms of a description of the significance of the heritage assets, including any contribution made by their setting. Notwithstanding this, I have paid regard to the contents of the Nelson Street Conservation Area Appraisal (Appraisal), list description, and the other evidence. Overall, I am satisfied that I have sufficient evidence to understand the potential impact of the proposal on significance.
11. Relevant aspects of the character of the Conservation Area drawn from the Appraisal include the relatively short historical development of the area that gives it a sense of cohesion. Many of the streets include small terraces of houses built to the pavement, creating a fairly narrow topography and sense of enclosure and intimacy. The exception is the area around St. Andrew's Church, where the churchyard and gardens gives a greater sense of openness.
12. Paying regard to the map showing the Conservation Area boundary provided by the Council, by virtue of its proximity, the proposal has the potential to affect the setting of the grounds of St Andrew's Church. However, the high walls at the boundary of the church and the site, along with the alleyway that runs between the two, provide physical and functional separation. This separation is increased further by mature planting and the modern vicarage building and its associated garden.
13. These factors create a low level of intervisibility and visual association between the site and this part of the Conservation Area. As such, views from within the Conservation Area and potential for the proposal to impact on its setting would be very limited. In the instances where views would be available from the church grounds they would be filtered through greenery and intervening built forms (most notably the boundary walls and vicarage discussed above).
14. In these views, the design and appearance of the proposed dwellings would be such that no harm to the character and appearance of the Conservation Area would result. Notwithstanding my conclusions on living conditions, which relate to properties in closer proximity, I do not find that the proposal would be unduly dominant in character when viewed from within the Conservation Area. This is particularly due to the traditional roof profile and degree of set in to the side of the dwellings at front first floor level, which would ensure a suitable degree of visual articulation.
15. Given the relatively traditional elements incorporated, once established, the risk of the houses standing out any more than other 20th century developments in the surroundings is very low. In this regard, the Council's concerns around effects resulting from what they see as a 'contemporary design' are not substantively evidenced.

16. For the reasons discussed, the proposal would not result in harm to the significance of designated heritage assets. Further, the effects on setting would preserve the character and appearance of the Conservation Area and the historic interest of the Church of St Andrew. Consequently, there is no conflict with policy in the Framework in relation to heritage assets, in particular paragraphs 197, 199, 200 and 202.

Highway safety

17. The proposed vehicular access sits at the end of a pedestrian alley. The location is a space of less formal appearance that would not be readily interpreted as an area where motor vehicles would be readily anticipated by users of the alleyway. It also becomes progressively narrower as it moves into the alleyway. As such, the width of the space around the access is narrower and more irregular in shape.
18. Notwithstanding the relatively small number of dwellings proposed and the likely number of associated vehicle movements from the site, the conditions described above have the potential to create conflict between users of the alleyway and motor vehicles using the site. This may have consequent impacts in terms of highway safety.
19. I do not have satisfactory evidence to demonstrate that suitable visibility would be provided for the proposed access. Further, the plans do not show that drivers using the parking spaces would easily be able to turn within the site in a way that would allow them to enter and leave in a safe manner.
20. Given the site constraints described above and level of risk in terms of highway safety, I am not satisfied that the evidence demonstrates that acceptable visibility and access arrangements would result from the proposal. These are not matters which could be adequately left to condition as the amount of space for turning and parking is at question, which fundamentally affects the layout of the development.
21. I have paid regard to the 2021 Permission as a fallback position. However, the proposal differs in a number of respects. The space available for parking and turning is greater in the 2021 Permission and there is a lesser provision for parking spaces due to the reduced number of dwellings. The 2021 Permission also has a wider site access for vehicles compared to the proposal which shows a greater amount of the boundary wall being retained.
22. Because of these differences, the inferences that can be drawn from the 2021 Permission about the acceptability of the proposed visibility and access arrangements are limited.
23. For the reasons set out, it has not been demonstrated that the proposal would provide safe and suitable access to the site, with a consequent impact on highway safety. Consequently, there is conflict with paragraphs 110 and 111 of the Framework.

Living Conditions

24. The Council's reason for refusal makes reference to concerns about harmful effects on the living conditions of occupiers of 24-34 Western Road.
25. In relation to views from the upper floor levels, the proposal would include relatively large windows that are identified on the plans as being frosted glazing and serving bedrooms. Even if fixed shut, the size of the windows and the rooms they are intended to serve would be such that the appearance of figures in the windows are still likely to be visible from outside, even if they are obscured due to the glazing.
26. The upper floor terraces would be enclosed by timber slatted screens. However, the screens would still permit users of the terrace to see through the slats, although perhaps not in a way that would allow for direct overlooking. It is also unclear from the evidence whether users of the terraces could be seen by those outside.
27. The density and layout of the development would be such that the first floor of the dwellings (with their rear windows and terraces) would be seen as a large band of development when viewed from the properties at the rear. This would be the case even when account is taken of the visual variation provided by the proposed roof form.
28. Taking account of the proximity of the dwellings to the rear boundary, and adopting the Appellant's measurements, the proposal would represent an unreasonable intrusion on the occupants of properties on Great Western Road. The combined effects of the reduction in levels of privacy and enclosure resulting from the location of the dwellings in relation to neighbours would lead to an unacceptable reduction in living conditions.
29. In reaching a conclusion on this issue I have paid regard to the 2021 Permission. However, the proposal differs in a number of relevant respects, including the reduced separation distances between properties to the rear and absence of windows and terraces at upper floor levels.
30. I have also paid regard to the general privacy conditions of the area and degree of mutual looking which already exists, along with the pattern of development in the area and levels of enclosure that come along with the more urban context.
31. I also appreciate that the Council's evidence draws a distinction between direct and perceived overlooking. Such a distinction is not an unreasonable one to make. I have taken this difference into account in drawing my conclusions on the severity of the impacts, which in this case I find demonstrably harmful and warranting a negative conclusion on this matter.

32. The proposal includes raised deck areas for each of the dwellings. The Appellant has signalled a willingness to remove the raised decking, bringing most of the rear garden down to close to the existing levels. I am satisfied this could be achieved as part of a condition relating to landscaping. Subject to these measures, this element of the proposal would maintain acceptable privacy conditions for the occupants of dwellings on Great Western Road.
33. For the reasons set out, the proposal would have a harmful effect on the living conditions of occupiers of nearby properties. Consequently, there is conflict with policy 130 of the Framework in relation to creating places with a high standard of amenity for existing users.

Trees

34. The Council's officer report draws on specialist advice received in relation to a previous planning application, which included asking for a proposal specific Arboricultural Impact Assessment. Whether the Council sought similar advice to assist their consideration of the assessment that was subsequently produced to accompany the present proposal is unclear.
35. From the evidence provided, the substantive built forms of the proposed dwellings would lie outside the theoretical root protection area of the sycamore tree identified in the reason for refusal. The technical extent of the theoretical root protection area is based on the relevant standard that should be applied. This does not appear to be the subject of disagreement between the Council and the Appellant.
36. Although there is a lack of clarity on the degree to which they are based on specialist advice, I have paid regard to the Council's concerns in relation to the need for additional tree protection measures resulting from roots being established within the site. However, considering all the evidence on this matter, I am satisfied that these concerns could be more proportionately addressed by condition that requires the agreement of any appropriate tree protection measures following trial digs undertaken prior to commencement of development.
37. Subject to the condition discussed above, the proposal would not have a harmful effect on local trees. Consequently, there is no conflict with paragraph 130 and 131 of the Framework in relation to effectiveness of landscaping and trees.

Sequential test

38. It is common ground between the Appellant and the Council that the site is within Flood Zone 2 and that policy in the Framework requires a sequential test to be followed. The source of substantive evidence relating to the test is the Appellant's site specific Flood Risk Assessment (FRA).

39. That the FRA has been prepared in general accordance with the methodology in the Council's Site Specific Guidance for Managing Flood Risk is not substantively at issue, although the Council dispute the approach to assessing alternative sites.
40. I have paid regard to the Council's concerns. However, the 2021 Permission clearly establishes the principle of residential development on the site. This limits the usefulness of requiring the sequential test to be undertaken, given its policy aims of steering new development to areas with the lowest risk of flooding.
41. In conclusion, the proposal appropriately satisfies the sequential test in the Framework. Consequently, there is no conflict with policy in the Framework in relation to sequential testing, including paragraphs 161, 162, 163 and 164.

Conclusion

42. The proposal does not demonstrate that safe and suitable access to the site would be provided, with consequent impacts on highway safety, and there would be harmful effects on the living conditions of occupiers of nearby properties. There is consequent conflict with policy in the Framework.
43. The Council accept that the presumption at paragraph 11 d) of the Framework is engaged in this case.
44. In terms of benefits, the proposal would make a contribution to housing delivery in a location within an established settlement. I am mindful of the Government's commitment to significantly boosting the supply of housing and the contribution that small sites can make, as set out in the Framework. There are economic and social benefits related to the construction and occupation of the dwellings. As such, the proposal accords with the aims in paragraphs 60 and 69 of the Framework.
45. Paragraphs 119 and 120 of the Framework in relation to promoting effective use of land and the value of using brownfield land are acknowledged. However, these policies also set out the need to ensure safe and healthy living conditions and using suitable land. My conclusions on the main issues indicate that the proposal would not fully accord with these policies. As such, they do not attract significant positive weight in the planning balance.
46. As mentioned throughout this decision, the 2021 Permission creates a legitimate fallback position and is a material consideration in its own right.

47. The fallback position would allow 3 dwellings to be delivered on the site without the harmful effects that I have identified. The fallback position reduces the overall significance of the benefits that would result from the proposal's contribution to housing supply, as the overall gain between the 2021 permission and present proposal would be a single dwelling. This is a modest contribution that does not attract significant weight on the basis of the evidence that has been provided.
48. Weighing the issues up, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
49. As such, the presumption at paragraph 11 d) of the Framework does not direct me to grant planning permission.
50. In overall conclusion, for the above reasons and having regard to all other matters, I conclude that the appeal should be dismissed.

D.R. McCreery

INSPECTOR