



Appeal Decision

Site visit made on 5 July 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/Z2260/W/22/3304799

St Georges Garages, 2-12 Harold Road, Margate CT9 2HT

- 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 33 London Ltd against the decision of Thanet District Council.
 - The application Ref F/TH/21/0688, dated 30 April 2021, was refused by notice dated 21 July 2022.
 - The development proposed is the erection of a four-storey building containing 26 No. 2 bed flats and 8 No. 3 bed flats and erection of 3 No. 3 storey 4 bed terraced houses, with associated parking, access and landscaping works following the demolition of the existing commercial buildings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a four-storey building containing 26 No. 2 bed flats and 8 No. 3 bed flats and erection of 3 No. 3 storey 4 bed terraced houses, with associated parking, access and landscaping works following the demolition of the existing commercial buildings at St Georges Garages, 2-12 Harold Road, Margate CT9 2HT in accordance with the terms of the application Ref F/TH/21/0688, dated 30 April 2021, subject to the conditions appended to this decision.

Preliminary Matters

2. I have used the Council's description of development as this more accurately and concisely describes the proposed development. A similarly worded description was used on the appeal form.
3. A signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, dated 15 February 2023, has been submitted. I deal with this matter further below.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether an adequate provision of affordable housing would be provided; and
 - the effect of the proposed development on the integrity of the Thanet Coast and Sandwich Bay Special Protection Area.

Reasons

Character and appearance

5. I acknowledge that there are some consistent features along Harold Road, where properties generally front the street, set back behind small front forecourts and gardens. Nevertheless, the buildings which line the street are, on the whole, made up of a varied style, period and scale. They typically range from one to four storeys with a mix of historic properties and contemporary developments. The scale of development is particularly prominent to the north end of Harold Road, where larger flatted developments exist at the junction with Eastern Esplanade. Irrespective of when these developments were constructed or permitted, they form part of the character of the area. Overall, the pattern of development within the street is varied, having evolved over time.
6. There is no doubt that the proposed development would change the appearance of the site, resulting in the demolition of a modest complex of buildings set within an area of hardstanding, to be replaced by a predominantly four-storey block that fills much of the site frontage. I also acknowledge that the depth of part of the development would be greater than some neighbouring properties, as is the case with the existing garage buildings. However, the setback of the principal buildings from Harold Road would be consistent with adjoining properties and the wider street, as would the principal ridge level. The proposed development would bridge the gap created by the existing modestly developed site, between the larger developments to the north and south. Moreover, the proposed use of brick and inclusion of projecting bay features reflects established features found elsewhere within Harold Road. Accordingly, the proposed development would appear neither incongruous nor obtrusive in this varied setting and would integrate acceptably into the surrounding area.
7. I note the comments received around the loss of the existing garage building and sheds, which are alleged to make a significant contribution to the streetscape. I disagree for the reasons set out above.
8. Overall, I conclude that the proposed development would have an acceptable effect on the character and appearance of the area, in accordance with the relevant provisions of Policies QD02 and H08 of the Thanet Local Plan (LP, 2020), which in summary seek high-quality design in development which relates to the surrounding area. This is in a similar vein to the provisions of paragraph 130 of the National Planning Policy Framework (the Framework) insofar as good design is concerned.

Affordable housing provision

9. Whilst the site is allocated for an estimated 10 residential units, the proposed development would provide 37 units. LP Policy SP23 sets out that residential schemes of 10 units or more are required to provide 30% of the dwellings as affordable. This is unless meeting that figure would demonstrably make the proposed development unviable.
10. The appellant submitted a viability assessment with their planning application which concluded that a scheme limited to 10 dwellings, as allocated, would be

unviable. This was reviewed by the Council's own viability assessors, Dixon Searle Partnership, who agreed with the findings of that appraisal.

11. With the proposed 37 units, a 30% on-site requirement would amount to 11 affordable units. No on-site affordable provision is proposed. However, the Council's viability assessors were of the view that the scheme would be in a position to support a financial contribution. In response, an offer of £125,000 was made by the appellant towards affordable housing and other planning obligations, noting that this would reduce the developers return to below 15%.
12. Council officers, and viability assessors, had accepted this figure as reasonable. The figure was then apportioned, by officers, across a series of planning obligations including for the improvement of local education, healthcare and waste facilities. A figure of £78,877.64 was allocated towards affordable housing provision.
13. Since this time, an updated viability appraisal has been undertaken and is submitted in support of the appeal. The appellant now sets out that the scheme would be unable to reasonably provide the affordable housing or other financial contributions previously sought by the Council. The supporting evidence suggests that any surplus previously generated as part of the scheme has now been impacted by a rise in construction costs.
14. Nevertheless, the level of information provided in respect of the updated viability position is limited, as is any substantive commentary in that respect. Furthermore, this updated information has not been the subject of an independent review by the Council's own assessor. From that perspective, I cannot be certain that the figures set out by the appellant are reasonable relevant to the previous position. I am also mindful of the appellant's proposal to continue to provide financial contributions towards healthcare, education and waste facilities. Whilst these are important and welcome contributions, these, like affordable housing contributions, were not included within the updated viability appraisal.
15. A clause is included within the submitted Unilateral Undertaking (UU) for the Planning Inspector's consideration as to whether the remaining £76,877.64 affordable housing provision should be included or not, as previously.
16. Overall, I have insufficient evidence before me to be certain that the scheme cannot support any affordable housing provision, as it did previously. Moreover, there is no viability review or similar mechanism before me which might otherwise ensure that the maximum amount of affordable housing would be provided as part of the scheme in the event that it became more profitable. Accordingly, I am of the view that the scheme could, in all likelihood, provide an affordable housing offer in line with that set out within the submitted UU. On that basis, the proposed development would accord with the relevant provisions of LP Policies SP41 and SP23 which, in summary, seek to ensure the maximum amount of affordable housing is provided.

Thanet Coast and Sandwich Bay Special Protection Area

17. The appeal site lies within the zone of influence of the Thanet Coast and Sandwich Bay Special Protection Area (SPA). This site was designated due to the importance of its habitats.

18. All public bodies have a duty to take reasonable steps to further the conservation and enhancement of this designated area. Natural England advises that there is the potential for significant impacts on the SPA as a result of any net increase in residential development within the zone of influence. This is due to pressures on the site by reason of its attractiveness as a location for recreation.
19. The Conservation of Habitats and Species Regulations 2017 (the Regulations) require competent authorities, before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in combination with other plans or projects.
20. The proposal is not directly connected with or necessary for the management of the protected site and on-site mitigation would not be possible. I must therefore consider whether measures could be put in place to avoid or mitigate the impact of the pressure arising from the proposed development on the protected sites, and the effectiveness of any proposed measures.
21. The Council's Strategic Access Management and Monitoring Plan (SAMM, 2016) provides a strategy to mitigate the potential impacts of new housing development on the protected sites. This includes wardening at the sites, signage and interpretation, and the monitoring of birds and visitors. A tariff has been developed and is applied to new housing built within the zone of influence.
22. The Council sets out that a financial contribution of £13,302, based on this tariff, is required for the proposed development to contribute to the established district-wide mitigation strategy. This is not disputed by the appellant, who has submitted a signed and dated Unilateral Undertaking to secure the payment. Natural England has confirmed that financial contributions towards the SAMM would support relevant and effective mitigation measures to prevent harmful effects on the protected sites.
23. Based on the evidence before me, there is an appropriate mechanism in place that would secure a financial contribution to the SAMM, which I have found necessary to mitigate the impact of the proposed development on the negatively affected protected sites. There is no evidence before me to demonstrate that any other adverse effects exist.
24. Consequently, I conclude that the proposed development would not lead to unmitigated adverse effects on the integrity of the SPA, in accordance with the relevant provisions of LP Policy SP29, which in summary seeks development to comply with the SAMM. This is in a similar vein to paragraph 182 of the Framework and the Habitats Regulations.

Other Matters

25. I note the site's position adjacent to the Clifftop Conservation Area and the Norfolk Road, Warwick Road, Surrey Road Conservation Area. Statute¹ places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of these conservation areas (CA).

¹ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

26. The character and appearance of the Clifftop CA, and thus its special interest and significance, is in part derived from its makeup of predominantly historic and prominent seaside-facing properties. The special interest and significance of the Norfolk Road, Warwick Road, Surrey Road CA lies, is in part derived from its largely intact terraced residential streets, with consistent material treatments and features.
27. The existing layout and appearance of the site, in my view, makes no significant contribution to the setting of either CA. The proposed development would be of an appropriate scale relative to the established surrounding development, with limited views of the site possible from either CA. Where glimpsed between gaps in buildings, or within the highway, the development would be seen within the varied, urban context of Harold Road and properties fronting Eastern Esplanade. The proposed works would have a neutral effect on, and would therefore preserve, the character and appearance of both CAs as a whole. Accordingly, the proposed development would not harm the significance of these designated heritage assets.
28. I note the comments raised by occupiers of neighbouring properties and others including in respect of the loss of existing employment, living conditions, noise and light pollution, refuse storage, highways matters, trees, security concerns and the impact on infrastructure.
29. There is no dispute between the main parties in respect of the principle of the redevelopment of the appeal site. Whilst I acknowledge that the site is in use by an operational business, the site is ultimately allocated for housing within the Local Plan. In respect of living conditions, including light and privacy, there is no dispute between the Council and appellant. Based on the evidence before me, and my observations on site, I have no reason to disagree with those findings. Noise during construction would be controlled by construction management practices, to be conditioned, as would light pollution during the operation of the development. Conditions setting out measures to protect retained trees, as well as new landscaping, are detailed below.
30. The Council's highways authority previously confirmed no objection to the scheme subject to the provision of a set of proposed conditions in respect of parking and access. With no substantive evidence to the contrary, I have no reason to disagree with their findings or the proposed conditions, which are detailed below. Matters relating to infrastructure, including education, healthcare and waste, are dealt with through a series of financial contributions, further detailed below. In respect of comments relating to security, a condition in respect of secured by design principles has been imposed, having regard to the comments of Kent Police.
31. I have had regard to Article 8 of the Human Rights Act 1988 as it has been alleged that allowing this appeal may lead to the demolition of existing buildings on the site and that this has the potential to impact on the housing needs of current tenants, specifically in that they could become homeless.
32. I find that the interference with the rights of the tenant would be in accordance with the law and in pursuance of the well-established and legitimate aims of planning policy. There is no substantive evidence before me in this particular case that demonstrates that the need for the tenants to vacate the property at some future date would necessarily result in them being made homeless beyond that date, or that other options have been fully explored. For these

reasons, I am satisfied that any interference with the appellant's human rights is proportionate and legitimate in the public interest such that there is no violation.

Unilateral Undertaking

33. As explained above, a signed Unilateral Undertaking has been submitted by the appellant. This would secure the provision of financial contributions towards the mitigation measures set out within the SAMM, local healthcare facilities, education facilities at Garlinge Primary School and waste facilities at Thanet District Waste Recycling Centre. The UU also provides for an affordable housing contribution. Whilst I note that the Council had sought minor amendments to the wording of the UU, I have no such evidence of this before me.
34. Paragraph 56 of the Framework and Regulation 122 of the CIL Regulations sets out three tests that planning obligations must meet. Firstly, they must be necessary to make the development acceptable in planning terms. Secondly, they must be directly related to the development. Thirdly, they must be fairly and reasonably related in scale and kind to the development.
35. I am satisfied that the planning obligations would meet the requirements of the Framework and the CIL Regulations.

Conditions

36. The Council has provided a list of conditions that it suggests should be applied in the eventuality that the appeal is allowed. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance, and have amended the wording of some, and combined provisions of others, without altering their fundamental aims.
37. I have included the standard condition requiring commencement within the relevant statutory period. I have imposed a condition requiring adherence to the relevant plans for certainty.
38. I have imposed conditions in respect of surface water drainage and foul drainage in the interests of sustainability, flood prevention and water management. I have imposed conditions in respect of contamination and asbestos in the interests of public safety.
39. I have also imposed conditions relating to a construction management plan, vehicular access, surfacing, visibility splays and gates in the interests of highway safety, with further conditions imposed in respect of cycle and vehicle parking. These are imposed in the interests of sustainability and to ensure sufficient parking space is provided.
40. I have imposed conditions in relation to landscape design, boundary treatments, materials and tree protection measures in the interests of character and appearance, to ensure the health of retained trees and the standard of accommodation for future occupiers. Conditions relating to doorstep play and refuse are imposed in the interests of the standard of accommodation of future occupiers.
41. Drainage, contamination, asbestos and construction management conditions are pre-commencement conditions as they are necessary to ensure that any potential mitigation is properly designed in prior to the commencement of

development. A condition relating to electric vehicle parking has been imposed based on the comments from the Council's environmental specialists in the interests of certainty and sustainability. In the interest of the future security of occupants of the development, I have imposed a condition to ensure that the scheme adheres to the principles of Secure by Design accreditation.

42. A condition requiring that the development shall be constructed on order to meet water efficiency standards is unnecessary in my view as this matter would be dealt with under Building Regulations.

Conclusion

43. For the above reasons and having regard to all matters raised, I conclude that the appeal should be allowed.

A Price

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 permitted shall be carried out in accordance with the following approved plans: 4052/lp100, 4052/p210 Rev B, 4052/p211 Rev B, 4052/p212 Rev B, 4052/p213 Rev B, 4052/p215 Rev B, 4052/p216 Rev B, 4052/p220, 4052_p200 rev A, 4052_p203 Rev A, 4052_p204 Rev A, 4052_p206 Rev A.
- 3) Prior to the commencement of the development hereby permitted, details of a sustainable water drainage scheme for the site shall be submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters. The development shall be carried out in accordance with the approved details prior to the first occupation of the development and thereafter maintained.
- 4) Prior to the commencement of the development hereby permitted, details of the means of foul drainage shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter maintained.
- 5) Prior to the commencement of the development hereby permitted:
 - (a) An intrusive investigation and updated risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the local planning authority. It shall include an assessment of the nature and extent of any contamination on the site. The report of the findings shall include:
 - i. A survey of the extent, scale and nature of contamination;
 - ii. An assessment of the potential risks to:
 - Human health;
 - Property including buildings, crops, pets and services;
 - Adjoining land;
 - Ground waters and surface waters;
 - Ecological systems.
 - iii. An appraisal of remedial options and identification of the preferred option(s). All work pursuant to this condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11);
 - (b) If the investigation and risk assessment show that remediation is necessary, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human

health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved details. The local planning authority shall be given two weeks written notification of commencement of the remediation scheme works;

(c) Following completion of the remediation works and prior to the first occupation of the development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

- 6) Prior to the commencement of the development hereby permitted, including demolition and site clearance, a survey specifying the location and nature of asbestos containing materials and an action plan detailing treatment or safe removal and disposal of asbestos containing materials shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to the commencement of the development hereby permitted, details to include the following shall be submitted to and approved in writing by the local planning authority:
 - a. Routing of construction and delivery vehicles to/from the site;
 - b. Parking and turning areas for construction and delivery vehicles and site personnel;
 - c. Timing of deliveries;
 - d. Provision of wheel washing facilities;
 - e. Temporary traffic management/signage;
 - f. Measures to control noise affecting nearby residents;
 - g. Dust control measures; and
 - h. Access arrangements.

The development shall be carried out in accordance with the agreed details.

- 8) Prior to the commencement of the development hereby permitted, details of the electric vehicle charging points to be provided within the development, including their location and design, shall be submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be provided prior to the first occupation of the development and thereafter maintained.

- 9) Prior to the commencement of the development hereby permitted, a land level plan that identifies the location of any retaining walls to be provided within the site shall be submitted to and approved in writing by the local planning authority. The plan shall indicate the height of all boundary treatments to be installed around the perimeter of the site. The development shall be carried out in accordance with the approved details and thereafter maintained.
- 10) Prior to the construction of the external surfaces of the development hereby permitted, samples of the materials to be used shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 11) Prior to the installation of any external lighting of the development hereby permitted, a lighting strategy shall be submitted to and approved in writing by the local planning authority. The lighting strategy shall:
 - a. Identify those areas/features on site that are particularly sensitive for badgers and bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
 - b. Show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory; and
 - c. Details of the types of lighting to be used including their fittings, illumination levels and spread of light.

The development shall be carried out in accordance with the approved details and thereafter maintained.

- 12) Prior to the installation of the gate within the access road leading from Norfolk Road, details of the design, materials and method of operation shall be submitted to and approved in writing by the local planning authority. The gate shall be installed in accordance with the approved details and thereafter maintained.
- 13) Prior to the first occupation of the development hereby permitted, a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, shall be submitted to and approved in writing by the local planning authority. The report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed. The development shall be carried out in accordance with the approved details.
- 14) Prior to the first occupation of the development hereby permitted, the vehicular access and associated vehicle crossing point onto the highway, as shown on the approved plan numbered 4052_p206 rev A, should be completed and made operational.
- 15) Prior to the first occupation of the development hereby permitted, the redundant vehicle crossing to Harold Road shall be removed and the

footway reinstated in accordance with the specifications set out in the Kent Design Guide.

- 16) Prior to the first occupation of the development hereby permitted, the vehicle loading/unloading and turning facilities shown on the submitted plan number 4052_p206 Rev A shall be provided and thereafter retained.
- 17) Prior to the first occupation of the development hereby permitted, the area shown on submitted plan number 4052_p206 Rev A for vehicle parking and manoeuvring areas shall be provided and thereafter retained.
- 18) Prior to the first occupation of the development hereby permitted, details of the design of the cycle parking facilities, as indicated on submitted plan number 4052_p206 Rev A, shall be submitted to and approved in writing by the local planning authority. The details shall include a double stacked design to accommodate 34.no bikes. The cycle parking facilities shall be provided prior to the first occupation of the development hereby permitted and thereafter retained.
- 19) Prior to the first occupation of the development hereby permitted, visibility splays of 2 metres by 2 metres shall be provided behind the footway on both sides of the vehicular access and parking spaces fronting the Harold Road access. No obstructions over 0.6m above footway level shall be provided. The visibility splays shall thereafter be maintained.
- 20) Prior to the first occupation of the development hereby permitted, full details of both hard and soft landscaping works, to include the following, shall be submitted to and approved in writing by the local planning authority:
 - species, size and location of new trees, shrubs, hedges and grassed areas to be planted;
 - all hard surfaced areas beyond the limits of the highway;
 - walls, fences, railings, and any other means of enclosure proposed, which shall include a 1.8m high boundary treatment around the car park area, and a minimum 1.5m high enclosure around the communal and private doorstep playspace; and
 - ecological enhancements to be provided within the site, including bird boxes.

All hard and soft landscaping works shall be carried out in accordance with the approved details, prior to the first occupation of any part of the development. 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.

- 21) Prior to the first occupation of the development hereby permitted, a landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned gardens, shall be submitted to and approved in writing by the local planning. The amenity areas shall be managed in accordance with the approved landscape management plan in perpetuity.
- 22) Prior to the first occupation of the development hereby permitted, the doorstep play area as shown on submitted plan number 4052_p206 Rev A, shall be provided and thereafter maintained.

- 23) Prior to the first occupation of the development hereby permitted, the refuse storage facilities as specified on submitted plan number 4052_p206 Rev A shall be provided and shall be kept available for that use at all times. The bin collection area for the dwellings shall be used on collection day only, with the bins moved back to the bin storage area at all other times.
- 24) Prior to the first occupation of the development hereby permitted, details of how the development would adhere to the principles of Secure by Design shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 25) Existing trees, shrubs and hedgerows identified for retention as part of the development hereby permitted, or existing trees growing on an adjacent site where excavations, changes to land levels or underground works are within the crown spread, shall be protected in accordance with BS 5837 2012 as set out within the tree survey report reference: 1903/07/2021. Protective fencing shall be erected below the outer most limit of the branch spread or at a distance equal to half the height of the tree, whichever is the furthest from the tree. The protective fencing shall be erected before the development hereby permitted or any site clearance work commences and shall thereafter be maintained until the development has been completed. At no time during the site works shall building materials, machinery, waste, chemicals, stored or piled soil, fires or vehicles be allowed within the protective fenced area. Nothing shall be attached or fixed to any part of a retained tree and it should not be used as an anchor point. There shall be no change in the original soil level, nor trenches excavated within the protective fenced area.
- 26) All new window and door openings within the development hereby permitted shall be set within a reveal of not less than 100mm.
- 27) The development hereby permitted shall incorporate a bound surface material for the first 5 metres of the proposed vehicular access from the edge of the highway.
- 28) The vehicular access gates hereby permitted shall open away from the highway and be set back to a minimum of 5.5 metres from the edge of the highway.