



Appeal Decision

Site visit made on 24 January 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2024

Appeal Ref: APP/J2210/W/23/3316158

Penny Lodge, Tower Hill, Whitstable, Kent CT5 2BW

- 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 Whitstable Oyster Company Ltd against the decision of Canterbury City Council.
 - The application Ref CA/22/02356, dated 1 November 2022, was refused by notice dated 15 December 2022.
 - The development proposed is described as the 'Demolition of Penny Lodge and residential redevelopment comprising a block of 5 no. 2-bed apartments'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published by the Government after the Council's decision but before the appeal came before me. It does not raise any new considerations in relation to this appeal.
3. A unilateral undertaking has been entered into by the appellants, which provides for a contribution to the strategic access management and monitoring schemes, in respect of the Thanet Coast and Sandwich Bay Special Protection Area (SPA) and the Thames, Medway and Swale Estuaries SPA. I address this matter in more detail in my decision below.

Main Issue

4. The main issue is the effect of the proposed development on the character or appearance of the area, with particular regard to the Tankerton Conservation Area.

Reasons

The designated heritage asset

5. The appeal site, which comprises a detached part one/part two storey dwelling and its curtilage, lies within the Tankerton Conservation Area (TCA), which is a designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act), requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
6. From what I have read and from what I saw, the TCA is primarily focussed on Whitstable Castle and part of the Promenade. Linear in shape, much of the TCA

is open space, parkland and the slopes fronting onto the seashore. Whilst there is variety in the buildings within the TCA, many appear to date from the late 19th and early 20th centuries and are testament to the town's development and expansion as a seaside resort. Therefore, insofar as it relates to this appeal, the TCA derives some of its significance from the quality of the spaces in and around the TCA, as well as the aesthetic value in the quality of the period architecture.

Assessment

7. The proposal would see the existing dwelling demolished. This existing building is modest and unassuming, and the main parties agree that its demolition would not be harmful to the TCA. I have no reason to come to a different conclusion.
8. In its place, a new detached building would be erected. The new building would be set over four floors with living accommodation on three of them. It would have both a larger footprint and a greater mass and scale than the existing but would similarly be designed to reflect the underlying topography of the site. Ostensibly the building would therefore appear from Tower Hill as being two storeys plus the roof. From the rear, the building would be more fully expressed as having a lower ground floor, two full floors of living accommodation with further living accommodation within the roof space above the main part of the building.
9. The proposed building would incorporate various materials and stylistic cues found on other buildings in an around the area. The front elevation seeks to provide a modern interpretation of the nearby castle buildings, albeit this is slightly lost amongst the large, glazed openings and mansard roof. The rear elevation is more overtly contemporary, incorporating a range of materials as well as balconies and angled walls intended to direct certain views away from Beach Walk. The flat-roofed projection to the north of the building would also be more evident from the rear but overall, the structure would take the form of a large, contemporary, box-like shape.
10. The proposed change would represent a significant increase in scale of built form. Given the relative openness of the site to views from Tower Hill, the Promenade and from parts of Beach Walk, the proposal would be highly visible and prominent. Whilst visibility does not necessarily lead to harm, the sizable, angular, zinc seamed roof would significantly contribute to the building's presence and be a somewhat jarring element within the environment of Tower Hill. Whilst there is some variety in building heights around the appeal site, the immediate context is one of more modestly sized and proportioned properties.
11. When seen from the promenade, in addition to the zinc roof, the proposed north side of the building would be highly visible, presenting as a bulky elevation that would accentuate the discordant nature of the building. The openness of the area and space around buildings is a feature of the TCA and is particularly appreciable from the promenade when looking towards the appeal site. These qualities would be diminished by the insertion of such a substantial structure.
12. Whilst some elements of the building such as the main composition of the rear (west) elevation (excluding the roof) are more successful and I accept that there are some examples of flat roofs within the conservation area, in my view

there would nevertheless be a stark contrast between the receiving environment and the proposal. Therefore, as a whole the building would appear unduly prominent and incongruous and so would be harmful to the character and appearance of the area.

13. In reaching this view, I am aware that planning permission was granted in 2015 on the site and which, amongst other things, allowed for an increase in the height of the building as well as a new dormer window and balcony. Whilst both main parties have referenced the permission, neither has confirmed that it remains extant. From my site visit it did not appear to have been implemented.
14. I have not been furnished with full details of the particular circumstances of that previous case or the Council's reasoning in approving the proposal at that time. That scheme also appears to have been permitted under a different policy context. Whilst there is no doubt some continuity between the previous development plan and the current one, particularly in terms of policies aimed at ensuring appropriateness of design and protection of heritage assets I cannot be entirely sure that the policies remained exactly the same.
15. Even if the 2015 permission remains extant and I were able to attribute some weight to it, I do not find it determinative of this main issue, which I have considered on the basis of the planning merits of this specific proposal and the existing policy context.
16. The Council does not object to the redevelopment of the site in principle and I see no reason why some contemporary design and materials would be objectionable in principle. However, I find this particular proposal to be at odds with, and unsympathetic to, its environment. For the above reasons, I therefore conclude that the proposal would fail to preserve or enhance the character or appearance of the TCA.
17. The proposal would conflict with Policies DBE3, HE1, HE6 of the Canterbury District Local Plan 2017 which, amongst other things, require development to respond to the existing character, setting and context of a site; and to preserve or enhance the significance of heritage assets.
18. The proposal would also be contrary to Paragraph 195 of the Framework which seeks to conserve heritage assets in a manner appropriate to their significance.
19. In terms of the Framework, the harm I have identified would be less than substantial. Paragraph 208 of the Framework, states that where harm to a heritage asset would be 'less than substantial' this should be weighed against the public benefits of a proposal.

Public Benefits

20. The proposal would accord with the Framework's support for windfall sites and wider objective to significantly boost the supply of housing. A net increase of four new residential units would make only a small numerical contribution towards housing supply but would nevertheless be a positive benefit.
21. There would be associated economic benefits from the construction phase, albeit temporary, and in the longer-term future occupiers may make a more general economic contribution towards supporting services in the surrounding and wider areas. However, given the scale of the development the amount of that expenditure is unlikely to be high.

22. No doubt a modern contemporary building would be able to adopt sustainable forms of construction thereby reducing the pressures on important or scarce resources. Although such measures are becoming more common and some a requirement of various control regimes, they could nevertheless be given a small amount of positive weight.
23. As the proposed development would be within a settlement and well located to local services and facilities there would be opportunities for future residents to adopt sustainable modes of transport. Some positive weight can therefore be attributed in this regard.
24. The existing building is modest in both scale and appearance, and I find its effect on the TCA to be neutral. I consider its removal to similarly be neutral on the TCA. As such, there would not be a public benefit from its demolition.
25. It is suggested that the proposal represents an efficient use of land, in accordance with the Framework. However, paragraph 128 of the Framework is quite clear that making efficient use of land should not be at any cost. Amongst other things its use must take into account the desirability of maintaining an area's prevailing character and setting; and the importance of securing well-designed, attractive and healthy places. As the proposal would not meet these objectives, it would conflict with the Framework's approach to the efficient use of land.

Heritage Balance

26. Section 72(1) of the Act requires decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area, and it is a matter to which I have attached considerable importance and weight. Furthermore, Paragraph 205 of the Framework specifies that great weight should be given to the asset's conservation, irrespective of that harm being less than substantial.
27. Therefore, whilst the proposal and the delivery of these new residential units would have some public benefits which weigh in its favour, in this instance the strength of the heritage objection is greater. Therefore, I find that the public benefits would not, either individually or collectively, be sufficient to outweigh the harm to the heritage asset which would result from the development.

Other Matters

28. The appeal site lies within the Zone of Influence of the Thanet Coast and Sandwich Bay SPA and the Thames, Medway and Swale Estuaries SPA. The Conservation of Habitats and Species Regulations 2017 requires me as the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposal, either alone or in combination with other plans or projects, on the integrity of the sites. I note that the appellant has committed through a Unilateral Undertaking (UU) to make the requisite Strategic Access Management and Monitoring Strategy payment to the Council in order to address their concerns in regard to this issue.
29. I am aware that the Council has raised two relatively small queries on the UU, relating to the fee for monitoring the obligation. If I had come to a different conclusion on the main issue, it would have been necessary for me to consider the Council's queries further and undertake an Appropriate Assessment in order to give consideration to the likely effectiveness of the mitigation measures.

However, as I am dismissing the appeal for another reason, it is not necessary for me to consider these matters further.

30. The appellant notes that there is no objection from the Council to such matters as the proposed density; housing mix; internal space standards; on-site parking provision; highway safety etc. However, these demonstrate an absence of harm rather than being matters which weigh noticeably in the scheme's favour.
31. The Council considered the effect of the proposal on the living conditions of neighbouring occupiers but concluded that there would not be a loss of light, sense of enclosure, overlooking or overbearing impact resulting from the proposed development. In view of my overall findings, it is not necessary for me to consider these matters further or come to any conclusions on them. However, I had the benefit of viewing the site from a neighbouring property. From this visit I was able to appreciate the likely views that would be available from the top floor balcony of the proposed building. Therefore, had I come to a different conclusion on the main issue, I would have sought further comments from the main parties as to the effect of the proposal on the living conditions of neighbours in Beach Walk.

Conclusion

32. As the proposal is contrary to the policies of the Framework relating to designated heritage assets, there is a clear reason for dismissing the appeal. On this basis the approach to decision making set out in paragraph 11(d) of the Framework would not be engaged, even if there was a shortfall in housing land supply.
33. Whilst there would be some beneficial aspects of the scheme, I have not found there to be justification for permitting the less than substantial harm to the heritage asset.
34. For this reason, having considered the development plan as a whole, the requirements of the Act and the Framework, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR