



Appeal Decision

Site visit made on 4 June 2024

by N Praine BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2024

Appeal Ref: APP/D1265/W/24/3339145

27 Old Castle Road, Weymouth, Dorset DT4 8QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Nehalennia Ltd against the decision of Dorset Council.
 - The application ref is P/VOC/2023/02548.
 - The application sought planning permission for development described as demolish existing dwelling & erect 2no. dwellings without complying with conditions attached to planning permission Ref WP/19/00552/VOC, dated 20 November 2019.
 - The conditions in dispute are Nos 1,2,3,4,5,6,9,11,12 & 13 as set out in the Council's Decision Notice Ref WP/19/00552/VOC.
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Decision

1. The appeal is allowed and planning permission is granted to demolish existing dwelling & erect 2no. dwellings in accordance with the terms of the application, Ref P/VOC/2023/02548, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Nehalennia Ltd against Dorset Council. This application is the subject of a separate decision.

Background and Main Issue

3. On the 20 November 2019, the Council approved planning permission ref WP/19/00552/VOC for development described as demolish existing dwelling & erect 2no. dwellings. An application, ref P/VOC/2023/02548, was subsequently made by the appellant to vary the conditions as set out above and this was primarily to make amendments to both proposed dwellings including changes so Plot 1 would "mirror" Plot 2. This application was refused on the 31 August 2023 and is the subject of this appeal.
4. Given the above background, the main issue is the effect of the proposed development on the character and appearance of the area with particular reference to scale and bulk. I will also consider the other conditions in dispute later in this decision.

Reasons

5. As one approaches the appeal site along Old Castle Road from the junction with Sudan Road, it is apparent that this part of Old Castle Road enjoys diversity in building scale and bulk as part of its streetscape. Some of the properties are

two storey and a proportion of these also have a third storey in the roof. As the journey toward the appeal site continues, the timber clad buildings of 23 Old Castle Road read as single storey buildings, and additional single storey buildings, some with accommodation in the roof space, also sit opposite No 23.

6. Continuing to the top of this part of Old Castle Road, and close to the appeal site, the variation continues with two storey accommodation as well as taller three storey, some with further fourth floor accommodation in the roof spaces, sit along this section of the street. This variation in scale and bulk continues further along Old Castle Road and again building heights change as one continues down the other side of Old Castle Road toward Sandsfoot Gardens.
7. I appreciate that the buildings at No 23 read as smaller scaled buildings, however, they sit next to an existing two-storey gable ended building and this demonstrates the variation in building scale and bulk. While traveling up Old Castle Road toward the appeal site, this variation continues to both sides of the road with buildings reducing and increasing in scale and bulk. Taller buildings sit next to smaller buildings along this section of Old Castle Road, and this creates a sense of identity, local distinctiveness, and interest as one travels toward and beyond the appeal site from Sudan Road.
8. While the changes to Plot 1 would depart from what was previously approved and it would appear as a larger scaled building next to No 23, these alterations would be limited by both the proposed upper floor setback of Plot 1 from Old Castle Road and stepped side elevation facing No 23. The variation in materials, setbacks and windows to break up the elevations would also create a smoother transition between buildings when read in the wider context of Old Castle Road.
9. The single storey garage of Plot 1 would project forward toward Old Castle Road and this would mirror Plot 2. The balustrade would comprise glass surrounding the deck and given the variation in scale and bulk within the locality, these aspects of the development would be sympathetic to local character adding further interest to the streetscape.
10. These design features, in combination with the diversity of the existing streetscape, would ensure that the proposed development, when viewed from Old Castle Road and while taller than its immediate neighbours at No 23, would not appear stark, bulky, or dominant. The transition in scale across buildings and the proposed design would complement the established identity, sense of place and distinctiveness of the area.
11. Views from the beach and the water reflect a coastal setting with buildings of varying design and appearance. For the same reasons as already set out above, the proposed development would introduce a building which would sensitively follow the existing setting.
12. The proposed development would therefore successfully integrate into the character and appearance of the area with particular reference to scale and bulk. It would comply with the relevant provisions of Policies ENV10 and ENV12 of the West Dorset Weymouth and Portland Local Plan (2015) and the National Planning Policy Framework. These, amongst other things, seek to ensure that development respects the surrounding and distinctive character of the area.

Other Matters

13. The Council has confirmed that the proposed changes would not result in any significant alteration to Plot 2 compared to an earlier extant scheme. Plot 1 would also be reasonably separated and sited away from neighbouring occupiers to ensure that no unacceptable loss of light or outlook would occur.
14. The appellant requests that Plot 1 and Plot 2 are treated as separate chargeable development for Community Infrastructure Levy ("CIL") purposes. As this appeal creates a new permission, and the levy applies to planning consents, revised liability may need to be calculated and new notices issued. These matters fall outside the scope of this appeal.

Conditions

15. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should set out all the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect¹. The appellant has provided comments on which conditions should continue to have effect and the Council have also provided comment in this respect. I have taken these comments into account in coming to my overall decision.
16. In allowing this appeal, a new permission is created, and the original permission remains extant and unaltered (along with the conditions attached to it). Therefore, I have imposed a time condition for certainty. For the same reasons of certainty, I have also imposed a condition requiring the development to be carried out in accordance with the approved plans.
17. I note that a ground stability report was supplied and approved under a different application. However, this report relates to a scheme with considerable differences to the development before me and is dated 2016. Clifftop recession, subsidence and land instability are matters of great importance, the consequences of which can be very significant both within and beyond the appeal site. Given the scale and degree of changes and passage of time, updated and proportionate information on ground stability would be necessary to show the proposed development would not alter the conclusions of the previous report. It is also necessary to restrict some permitted development rights in the interests of ground stability.
18. Conditions to control materials and landscaping are necessary in the interests of the character and appearance of the area. Turning, parking and highway access conditions are necessary in the interests of highway safety. Additionally, a condition to ensure the Construction Environment Management Plan is adhered to is also necessary in the interests of both highway safety and neighbouring living conditions.
19. Conditions regarding use of flat roofs are necessary in the interests of neighbouring living conditions. Given the change in levels, privacy screens and obscure glazing would be required to the side aspects of the sea facing deck areas and side facing windows. Without them unacceptable views onto adjoining neighbouring land would be possible.

¹ Paragraph: 015 Reference ID: 17a-015-20140306 of the Planning Practice Guidance

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed subject to the conditions listed in the attached schedule.

N Praine

INSPECTOR

Schedule of Conditions (14 in total)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Proposed Site Plan Drawing Number W0791_0103B, Plot 1 Proposed Floor Plans - Drawing Number W0791 - 0200D, Plot 1 Proposed Elevations - Drawing Number W0791 - 0300D, Plot 2 - Proposed Floor Plans - Drawing Number W0791 0201B, and Plot 2 - Proposed Elevations - Drawing Number - W0791 - 0301C.
- 3) Prior to any works comprised in the construction of Plot 1, a verification report prepared by a suitably qualified and experienced geotechnical engineer shall be submitted to confirm that the conclusions of the Ground Stability Report dated 5 December 2016 and approved under reference WP/20/00144/CWC remain valid, or if that is not the case, amendments that should be made to ensure ground stability shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the report dated 5 December 2016 and any such amendments as may be necessary in accordance with this condition.
- 4) All facing and roofing materials for Plot 1 (No.25) shall match the approved materials for Plot 2 (No.27) submitted under application ref: WP/20/00144/CWC. Both dwellings shall be completed in accordance with the approved materials and retained as such.
- 5) All hard and soft landscaping shall be carried out in accordance with the approved details drawing number: 2046/1J received May 2017. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme which should be submitted and agreed in writing with the Local Planning Authority prior to the occupation of any part of the development.
- 6) The management and maintenance of the landscaping shall be carried out for a minimum period of 5 years in accordance with the Landscape Management and Maintenance Plan dated April 2020 submitted and approved under application ref WP/20/00144/CWC.

- 7) Before the development hereby approved is occupied or utilised, the turning and parking shown on the approved plans shall have been constructed. Thereafter, these areas shall be permanently maintained, kept free from obstruction and available for the purposes specified.
- 8) Before the development is occupied or utilised the first 5 metres of the vehicle access, measured from the rear edge of the highway (excluding the vehicle crossing, must be laid out and constructed to a specification submitted to and approved in writing by the Local Planning Authority.
- 9) The Construction Environment Management Plan (CEMP) dated February 2020 submitted and approved under application ref: WP/20/00144/CWC, shall be adhered to throughout the construction period.
- 10) The development shall be implemented in accordance with the Biodiversity Mitigation Certificate of approval as issued by the Natural Environment Team dated 5th May 2017.
- 11) Prior to occupation of the development hereby approved, details of privacy screens to be installed on the areas marked "deck" regarding both plots shall be submitted to and agreed with the Local Planning Authority. Once agreed the screens shall be installed and retained in accordance with the agreed details.
- 12) Prior to occupation of the development hereby approved, and notwithstanding the submitted plans, a minimum of obscenity level 3 glazing shall be implemented to all side facing windows (north and south elevations) except where windows are above 1.7 metres high (measured from the finished floor level). Once installed the windows will be retained in accordance with this condition.
- 13) The flat roofs of the buildings, other than those marked as "deck" on the approved floor plans shall not be used externally as a balcony, deck, or veranda.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B or E of Part 1 of Schedule 2 to the Order shall be undertaken.

End of schedule