
Appeal Decision

Site visit made on 5 April 2016

by Joanne Jones BSc MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 May 2016

Appeal Ref: APP/P1235/W/15/3141855

Site rear 173 - 181, Brandy Row, Chiswell, Portland, Dorset DT5 1AP

- 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 Canford Estates Limited against the decision of Weymouth & Portland Borough Council.
 - The application Ref WP/15/00368/FUL, dated 12 May 2015, was refused by notice dated 15 December 2015.
 - The development proposed is the demolition of existing industrial accommodation and erect 9 dwellings and 1 residential conversion of existing building, car parking and external works. (Amended scheme).
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing industrial accommodation and erect 9 dwellings and 1 residential conversion of existing building, car parking and external works. (Amended scheme) at Site rear 173 - 181, Brandy Row, Chiswell, Portland, Dorset DT5 1AP in accordance with the terms of the application, Ref WP/15/00368/FUL, dated 12 May 2015, and the plans submitted with it, subject to the conditions set out in the Annex to this decision.

Application for costs

2. An application for costs was made by Canford Estates Limited against Weymouth & Portland Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Underhill Conservation Area; and
 - Whether developer contributions are required to make the development acceptable.

Reasons

Conservation Area

4. The appeal property is situated in the Underhill Conservation Area comprising streets of terraced properties from Fortuneswell down to the sea. As the site is
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in a Conservation Area, I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in accordance with Section 72(1) of the *Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990*.

5. Paragraph 132 of the National Planning Policy Framework (the Framework) says when considering the impact of new development on the significance of a heritage asset (which includes designated Conservation Areas), great weight should be given to the asset's conservation, and adds that significance can be harmed or lost through alteration. As these heritage assets are irreplaceable, any harm should require clear and convincing justification.
6. The Brandy Row part of the Conservation Area is primarily characterised by Portland stone and white rendered houses up to three storeys in height and by single storey store buildings. The buildings on Brandy Row face across the roadway and esplanade and then the beach and the sea. As I saw on my site visit the buildings in the surrounding area are laid out in close groups for stability and protection with thick Portland stone walls, with staggered roof heights which have developed in an *ad-hoc* fashion. These are representative and significant features of this part of the Conservation Area's character and appearance as a heritage asset. In reaching this opinion I have had regard to the '*Appraisal of the Conservation Areas of Portland*' document.
7. The appeal site occupies a prominent position, in terms of both views and location, within the Conservation Area. It forms a parcel of non-domestic buildings of stone construction, in various states of repair. In my judgement the buildings within the appeal site, particularly those in a derelict state, contribute little visually to the overall character of the Conservation Area when considered as a whole. However, that is not to say that the appeal site cannot perform an important role in the character and appearance of the area in which it is located.
8. The proposed development would remove the existing non-domestic buildings, but retain the boundary walling and a small outbuilding. A terrace of nine 2-storey dwellings, with further accommodation within the roof, would be constructed, backing onto the hillside at the rear. The retained outbuilding would be converted to form a one-bed dwelling. To the front of the site the entrance would be remodelled to 'open up' the roadway approach and car parking would be provided at a ratio of one space per dwelling.
9. The scale, height and fenestration of the buildings would reflect those of Cove Cottages to the east and the surrounding terraces of cottage style dwellings, which form the site's context. Moreover, the materials proposed, full details of which could be dealt with and secured by condition, would reflect others within the Conservation Area.
10. The Council are concerned that the proposed dwellings would in essence introduce an overly regular arrangement of rooflines compared to the existing more *ad-hoc* appearance of surrounding cottages. While I acknowledge these concerns, the massing of the rooflines would be broken up with simple design details such as chimneys, gables and dormer windows. Furthermore, the simple arrangement would not detract from, or be overly prominent in, views towards Cove Cottages. Accordingly, the regular arrangement of rooflines is not sufficient of itself to be harmful.

11. Objections were also raised referring to a lack of concern for the existing site layout and density, which, it is stated, reflects Portland's past in this part of the Conservation Area and regarding the relationship between the appeal site and the remaining non-domestic buildings fronting Brandy Row.
12. To my mind, the arrangement of the terrace and retention of the boundary features would ensure that the discreet enclave of buildings and their relationship with the central yard feature would remain. From the evidence before me the density of the dwellings would be below the local maximum, which would also reflect the more loosely knit non-domestic buildings fronting Brandy Row. Thus providing an important visual transition between residential and non-residential uses.
13. I observed that the appeal site is set back behind the non-domestic buildings fronting Brandy Row, but the site does maintain a relationship with the surrounding dwellings through the views that are gained from the Esplanade and nearby footpaths. Whilst I accept that the appreciation of the historic activities associated with this part of the Conservation Area would be diluted, the wider Conservation Area has a mix of commercial and residential uses, which the appeal scheme would somewhat embrace. Of note is the Council's Conservation Officer's view that the design of the buildings should complement and enhance the character of the Conservation Area. For the above reasons, I agree with this view and to my mind the overall net effect of the proposed development would provide a minor enhancement to the wider character and appearance of the Conservation Area.
14. In reaching this view I have considered a previous appeal decision relating to this site. This previous appeal referred to a development of 12 dwellings, including a terrace of 10 dwellings, 3-storey in height. These are significant factors which distinguish it from the appeal now before me.
15. In conclusion on this main issue, I consider that the proposal would enhance the character and appearance of the Conservation Area. The proposal therefore complies with the West Dorset, Weymouth and Portland Local Plan 2015 (Local Plan) Policies ENV4; ENV10 and ENV12, which seek, amongst other matters, that development should conserve and where appropriate enhance the significance of heritage assets, contribute positively to the maintenance and enhancement of local identity and distinctiveness, that the general design should be in harmony with the adjoining buildings and the area as a whole, and materials are sympathetic to the natural and built surroundings and where practical locally sourced. I also consider that the proposal complies with the Framework, in particular part 12 'Conserving and enhancing the historic environment'.

Developer contributions

16. An executed planning obligation is before me and I am required to assess whether it is necessary to make the proposed development acceptable in planning terms, directly related to the proposed development and fairly and reasonably related in scale and kind¹.
17. The provisions would ensure that the proposed development would secure the affordable housing contribution required by Local Plan Policy HOUS1, which

¹ Regulation 122 Community Infrastructure Regulations 2010 (as amended) (CIL Regulations)

requires for this site £86 per square metre gross internal area. The contribution towards open space provision would comply with Local Plan Policy COM1, which relates to community infrastructure. The contributions would be towards the provision of a multi-use games area within the West Weares area. Accordingly, I have taken the executed planning obligation into account in my decision.

Other matters

18. Concerns have been raised that the proposal would not reflect local housing needs and would cause the loss of small commercial units. Nevertheless, I have no evidence as to the extent of second home ownership or whether there is an inadequate provision of commercial units. I also note the Inspector's report into the Local Plan which stated that, in relation to housing supply, it is *"imperative that the Councils do not ignore new opportunities which come forward in sustainable locations and are consistent with other policy provisions"*, which is the case here. Moreover, I observed that there were also some vacant commercial premises within the area which would enable employment generation to take place.
19. I note the concerns raised by neighbours in terms of privacy issues. As I saw on my site visit some of the Cove Cottages gardens are at road level and/or below it at the top of the retaining wall to the rear of the appeal site. However given that the rear windows would be located below / look onto the retaining wall and given that the velux windows would be at a high level, I do not consider that the proposal would result in unacceptable levels of overlooking or loss of privacy. Additionally, overlooking of private gardens occurs in very many residential areas from neighbouring properties. Furthermore, given the ridge height and separation distances from the gardens belonging to Cove Cottages, the effect of the height and the proximity of the proposed terrace dwellings to the Cove Cottages gardens would be neither dominating nor oppressive.
20. The appeal drawings, which include sections and elevations, shows that in views from Cove Cottages because of falling ground only the top of the proposed roof ridges and chimneys would be visible above the roofline of existing buildings / sheds. Roofs are already highly visible and a key part of the view out to sea and because of the traditionally crafted stone appearance proposed the development would not result in the loss of the view and it would also therefore accord with the Council's 'Appraisal of the Conservation Areas of Portland' document. Of note is the Council's Conservation Officer's view that to *"put houses in place of the dilapidated factory site would not fundamentally alter the character of the view from Cove Cottages"*. In reaching this conclusion I acknowledge the concerns raised regarding the accuracy of the application drawings, however they have been revised during the planning application determination process and I see no reason to doubt the amended drawings.
21. Representations were made to the effect that the rights of an adjoining land owner, Mrs Welfoot, under the Human Rights Act 1998, Article 1 of the First Protocol, would be violated if the appeal were allowed. I do not consider this argument to be well-founded, because I have found that the proposed development would not cause unacceptable harm to the living conditions of Mrs Welfoot and other residents of Cove Cottages. The degree of interference that

would be caused would be insufficient to give rise to a violation of rights under Article 1 of the First Protocol.

22. Strong local concerns have been raised in relation to flood risk. However, the proposal has also been subject to consultation with the local water company, the Environment Agency, the Council's Emergency Services Planning Officer and the Dorset Surface Water Management Team. None of these specialist consultations has resulted in objections to the proposal. Consequently, on the balance of the evidence provided, I am satisfied that the proposal would not be unacceptable in this respect, subject to suitable planning conditions.
23. Third parties have referred to the recently enacted technical housing standards – nationally described space standard (2015). The supporting text to Local Plan Policy ENV12 sets out that development should be constructed in accordance with these national standards and also establishes that dwellings should have sufficient internal space for a high level of functionality so that day-to-day tasks can be carried out.
24. Whilst I acknowledge that the internal space is to a certain degree below the space standards, the Council had no concerns in that regard. To my mind the overall design of the accommodation would be suitable for day-to-day living and is informed by the relationship with nearby buildings and the general pattern of development hereabouts. I am also mindful that Local Plan Policy ENV10 states that development should be informed by the character of the site and its surroundings. Accordingly, the scheme would not, on balance, result in material harm to the living conditions for future occupiers.
25. I have considered the concerns raised in relation to parking. When considered overall, having regard to the evidence provided, the parking spaces provided on site, the conditions and configuration of the local highway network, the Council's officer assessment of this issue within the committee report and the absence of an objection from the highway authority, and subject to the application of appropriate conditions on any permission granted, I am satisfied that the proposal would not be unacceptable in this regard.
26. Accordingly, whilst the development would conflict to a limited extent with Local Plan Policy ENV12, this is outweighed by the surrounding material considerations. Therefore these 'other matter' issues referred to above do not on balance represent appropriate reasons to find against the proposal in this particular case.

Conditions

27. I have considered the conditions suggested by the Council against advice in the Planning Practice Guidance: Use of planning conditions (the PPG). I agree that conditions are needed to secure compliance with the submitted plans and commencement of development within 3 years, for the avoidance of doubt and in the interests of proper planning.
28. I also consider that the Council's suggested conditions numbered in their statement as 3, 4, 5 and 6 to be reasonable and necessary in the interests of the character and appearance of the Conservation Area. From the consultation response received from Dorset Council's Archaeologist relating to the historic sensitivity of the appeal site a condition is necessary to require the implementation of an archaeological written scheme of investigation.

29. Given my findings relating to flooding and highway safety I include the Council's suggested conditions , numbered in their statement as 7, 8, 11, 12, 14 and 15, in the interests of highway safety and flood safety and prevention. However, suggested conditions 11 and 12 are merged in to one in accordance with the advice in the PPG.
30. The Conservation Area status of Chiswell imposes significant restrictions on the permitted development rights enjoyed by homeowners. These restrictions are usually considered sufficient to ensure the character and appearance of Conservation Areas are preserved or enhanced, and no evidence has been provided to justify the imposition of further restrictions.

Conclusion

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

Joanne Jones

INSPECTOR

Richborough Estates

ANNEX – Conditions attached to Appeal Decision APP/P1235/W/15/3141855

- 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 (unnumbered); existing site (2790-1); site layout (2790-2 rev c); existing buildings (2790-6); dwellings (2790-7); elevations (2790-8 rev c); site sections (2790-10 rev b); house section (2790-11); and elevation details (2790-12).
- 3) No development shall take place until details and samples of all facing and roofing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) All external doors and window frames development hereby permitted shall be constructed in timber with the timber frames painted white.
- 5) No development shall take place until a schedule and detailed sections (scale 1:10) of all new windows and doors in the development have been submitted to and approved in writing by the Local Planning Authority. The schedule shall include additional information relating to:
 - (i) the method of opening;
 - (ii) the depth of the reveal from the face of the wall; and
 - (iii) the product number where the window is supplied from a manufacturers standard range (copy of catalogue to be included).

Thereafter the development shall be carried out in accordance with the approved details and shall be retained thereafter.

- 6) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include where relevant:
 - (i) proposed finished levels or contours;
 - (ii) means of enclosure;
 - (iii) car parking layouts;
 - (iv) other vehicle and pedestrian access and circulation areas;
 - (v) hard surfacing materials;
 - (vi) minor artefacts and structures (eg furniture, play equipment, refuse or other storage units, signs, lighting, etc);
 - (vii) proposed and existing functional services above and below ground (eg drainage, power, communications cables, pipelines, etc indicating lines, manholes, supports, etc); and
 - (viii) retained historic landscape features and proposals for restoration.

If within a period of 5 years from the date of the planting of any tree/plant, that tree/plant or any tree/plant planted in replacement for it, is removed, uprooted or destroyed or dies (or becomes in the opinion of the Local

Planning Authority seriously damaged or defective) another tree/plant of the same species and size as that originally planted shall be replanted in the first available planting season.

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

- 7) The development hereby permitted shall not be occupied or utilised until the access, parking and turning areas shown on the approved plans have been constructed. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.
- 8) No development shall take place until a Construction Traffic and Environmental Management Plan and programme of works has been submitted to and approved in writing by the Local Planning Authority. The plan shall include details of contractor's arrangements (compound, storage, parking, turning, surfacing and drainage). The plan shall also include hours of construction but shall not incorporate the burning of bonfires associated with the construction phase. The approved Construction Traffic and Environmental Management Plan shall be adhered to throughout the construction period for the development.
- 9) Prior to the commencement of the development a detailed surface water management and maintenance scheme for the site, based on the hydrological and hydrogeological context of the site, shall be submitted to and agreed in writing with the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 10) No development shall take place until a Written Scheme of Investigation (WSI) has been submitted to and approved in writing by the Local Planning Authority. This scheme shall cover archaeological fieldwork together with post-excavation work and publication of the result. No development shall take place other than in accordance with the WSI.
- 11) None of the dwellings hereby permitted shall be occupied until the flood mitigation measures (including the pedestrian stairway on to Cove Cottages) have been completed in accordance with the Flood Risk Assessment (dated April 2014) and the Flood Risk Assessment Addendum (dated September 2015) by Stilwell Partnership. The completed flood mitigation measures shall be maintained in perpetuity.
- 12) The dwellings hereby approved shall not be occupied until a copy of the submitted Emergency Evacuation plan (EEP) dated April 2015 by Stilwell Partnership has been provided to the occupiers. Written confirmation of each provision of the EEP, identifying the relevant dwelling and occupiers, shall be submitted to the Local Planning Authority within 14 days of each provision.