
Appeal Decisions

Inquiry held on 17-19 November 2015

Site visit made on 19 November 2015

by David Nicholson RIBA IHBC

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

Decision date: 18 December 2015

Appeal Ref: APP/E2205/W/15/3008308
5 & 7 East Hill, Tenterden, Kent TN30 6RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by McCarthy & Stone Retirement Lifestyles Ltd. against Ashford Borough Council.
 - The application Ref 14/01252/AS, was dated 2 October 2014.
 - The development proposed is demolition of existing buildings and erection of 22 retirement apartments (Category II type) with communal facilities, car parking and landscaping.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. A planning obligation in the form of a Unilateral Undertaking was submitted under section 106 of the Town and Country Planning Act 1990. I have dismissed this appeal so there is no requirement under Regulation 122 of the Community Infrastructure Levy Regulations 2010 to consider these matters further and, with the exception of a reference to the weight to be given to the affordable housing contribution, I have not done so.
3. The Inquiry sat for 3 days on 17-19 November 2015. I carried out an unaccompanied site visit of the surrounding area before the Inquiry and I conducted an accompanied site visit on 19 November 2015.
4. The application was reported to the Planning Committee on 1 April 2015 at which it was resolved that the Council would have refused the proposals for the reasons now set out in the Statement of Common Ground. Of these, concern regarding insufficient off-road parking (highway safety) and potential harm to protected species and loss of habitat were withdrawn, as was that with regard to infrastructure contributions subject to the now completed Undertaking.

Main Issues

5. From all the representations submitted, and my inspection of the site and surrounding area, I find that the main issues are:
 - (a) whether or not the existing hotel is a viable proposition and, if so, whether its loss would harm the vitality and viability of the town, rural tourism and the rural economy;

- (b) whether the proposals would preserve the setting of the Grade II* listed East Hill House;
- (c) whether the demolition and new proposals would preserve or enhance the character or appearance of the Tenterden Conservation Area, with particular regard to the loss of any contribution made by the existing buildings, and the massing, scale, bulk, and design of the proposals;
- (d) the effects of the proposals on the living conditions of neighbouring residents with particular regard to privacy and outlook from windows and private garden areas to Garden Cottage, Esperanto, 16 and 18 Golden Square, Little Birches, Pump Field House and The Limes;
- (e) the effects of the proposals on the living conditions of future residents with particular regard to external amenity space;
- (f) whether the proposals would amount to sustainable development as defined in the National Planning Policy Framework (NPPF).

Reasons

Tourism

6. Tenterden is a popular tourist destination. Attractions include its High Street, the Tenterden & District Museum, the Kent & East Sussex Railway, the Chapel Down Winery and the Old Dairy Brewery. The town's events include a Music Festival, a four day Folk Festival and a traditional Late Night Shopping event. There was no dispute that tourism is thriving in the town.
7. The Tenterden area, including St Michaels, Smallhythe, Rolvenden and High Halden, has a range of accommodation including hotels, bed & breakfast, guest houses, pubs with rooms and self-catering properties. In this area there are roughly 100 serviced rooms with 240 bed spaces¹. In Tenterden itself there are around 48 serviced rooms with about 109 bed spaces. There are no hotels as such in Tenterden but there are 3 pubs with rooms.
8. The appeal site lies 0.5 miles from Tenterden High Street. It comprises both No.5 and No.7 East Hill. The former is now the Collina House Hotel. The accommodation figures include the hotel (designated as guest accommodation) which has 15 bedrooms, all with private bathrooms, and an estimated 40 bed spaces. On this basis the Collina House Hotel is the largest single provider of bedrooms and bed-spaces in Tenterden.
9. No.5 was changed from a house into a hotel roughly 30 years ago and has been extended at least twice since. As well as bedrooms for tourists it has generously proportioned residential quarters within part of the building used by the owners and proprietors. Its current occupancy rates are around 25% over the whole year. This compares poorly with most other establishments in the area. The appellant suggested that this was an endemic problem due to its configuration and lack of opportunities for functions such as weddings and as a restaurant destination. The Council looked to a lack of investment to explain the poor occupancy rates.
10. The proposals would involve the complete demolition of the buildings on the site and the loss of the hotel. The Council argued that this would result in unacceptable harm to the tourist trade in Tenterden, contrary to policy CS17 of

¹ S Barber appendix 19

the Local Development Framework Core Strategy (CS), adopted in July 2008, which supports the retention of existing tourism facilities, and inconsistent with policy in NPPF 28 to support sustainable rural tourism.

11. The hotel was first marketed for sale as such in 2010 at a price of £1.35m. There were no takers. The agency was moved in 2013 at the same price and received interest leading to 8 viewings but no offers other than from the appellant in May 2014. It was acknowledged² that it is unlikely that it has been marketed during the 18 months of improved economic activity since then. The owners' agent advised the appellant's valuers³ that: *parties with 'pipe dreams and hopes' who might have liked to create a boutique hotel, but financially could not consider doing so, without there being a reduction of 'hundreds and hundreds of thousands'*. I was told that the owners' attempts to raise capital to refurbish and modernise the hotel were unsuccessful.
12. The combined premises of No.5 and No.7 were valued⁴ for the appellant for viability purposes at around £1.95m leaving a value for No.7 at about 600k. The evidence suggests that the current owners make a relatively small profit. The appellant has argued that the property has been more than adequately marketed, is not viable in its current configuration, and that there would be no discernable effect on the vitality or viability of the town.
13. From the above information I find it likely that the proprietors' dwelling alone within the hotel is probably worth a comparable amount to No.7. The hotel part has no other lawful use and so, excluding 'hope value' the business part of the property should be valued on the basis of its small profit margin noting the need for further investment. Taken together, I find that the figures for the business and residential elements do not suggest an overall value of anywhere close to £1.35m, especially during the years of economic downturn in which it was marketed. Consequently, I am not surprised that the hotel did not secure even low offers from those wanting to run it as a going concern.
14. I accept that the size and configuration of the hotel does not fit comfortably with the business models of budget hotels or wedding venues. Nevertheless, subject to the acknowledged need for investment, given the attraction of Tenterden and the near town-centre location, I am not persuaded that the hotel is beyond revival with the right owner. To make it popular again, and to reach the 60% occupancy rates which the Council considered achievable, would undoubtedly require significant funds on top of the purchase price but this supports my conclusion that the marketing exercise continually sought an unrealistically high price for hotel use.
15. On this point I conclude that the hotel probably remains potentially viable and that there is certainly insufficient evidence to show otherwise. The loss of the hotel would therefore conflict with policy CS17 which supports the retention of existing tourism facilities.
16. On the other hand, the town is blooming despite the low occupancy rates at the Collina House Hotel. I therefore accept that the degree of harm to the town, rural tourism and the rural economy would be small and that the weight to conflict with the CS should be tempered accordingly. There is little evidence to

² N Barber in cross-examination (XX)

³ Taylors' letter dated 22 October 2015: Appellant's supplemental Inquiry Statement appendix 1

⁴ Alder King Financial Viability Assessment, dated 19 December 2014: Appellant's Hearing Statement appendix 4

support the suggestion that there would be a net loss of employment. There would be little conflict with NPPF paragraph 28 which supports economic growth in rural areas. On this issue I find that the harm to the tourist industry alone would not outweigh the need for new accommodation for the elderly.

Listed building

17. East Hill House is a very fine example of a mid-18th century Georgian house. It is listed at Grade II*. The front elevation appears to be of brickwork in the Palladian style with an elegant Venetian window. However, closer examination reveals the façade to be of mathematical tiles. Perhaps on account of this construction technique the house is referred to in *Pevsner*⁵ as Kentish vernacular. Either way, its façade is a piece of carefully considered and very well proportioned architecture the significance of which should be afforded great weight as a designated heritage asset under NPPF 132. It stands at a focal point in the townscape when looking east from the town centre. It is separated from the appeal site by part of its garden.
18. In my assessment, the significance of East Hill House is derived primarily from its front façade and this is heightened by its context when viewed from the front, including the openness of its side garden and how that contributes to the dominance of the house. There was no dispute that the appeal site lies within its setting. Rather the disagreement was over whether its significance would be affected by the proposals.
19. I acknowledge that the open space around the building provides a backdrop that does little to detract from the striking elegance of East Hill House in its prominent location. However, beyond this gap, provided mostly by its garden, and the fact that the current size of the Collina House Hotel is largely obscured by planting, I find that the appeal site contributes little to the importance of East Hill House provided by its setting.
20. The proposals would be larger than the existing buildings. I accept that, in theory, a larger building on the site could draw the eye towards it and compete for attention with the listed building. Seen from in front of East Hill House, it would be possible to see the longer side elevation to the scheme. However, the block would be no taller and, when viewed from in front of East Hill House, the increased size would be obscured by the oblique angle, the distance back from the road, and the vegetation in the side garden which would be unaltered by the replacement building.
21. Overall, I find that the proposals would not cause any demonstrable harm to the contribution which the setting makes to the significance of the designated heritage asset, which would therefore be preserved. It would accord with NPPF 132 which requires great weight to be given to the conservation of a designated heritage asset whose significance can be harmed or lost through development within its setting. It would comply with the requirement in section 66 of the Planning (Listed Buildings and Conservation Areas) [LB&CA] Act 1990 to *have special regard to the desirability of preserving the building or its setting ...*

⁵ Buildings of England: West Kent & The Weald. 2nd Ed 1980 565 (J Newman)

Conservation Area

22. The Tenterden Conservation Area covers much of the town and is characterised by a wide variety of historic buildings arranged around a medieval street pattern. The area immediately around the site includes East Hill House and the late 19th to early 20th century housing along East Hill and what was once Golden Square. The Collina House Hotel has been extended a number of times so that it is the largest building along the road and the gap between it and No.7 is smaller than average and is partly taken up with a single storey garage. As with the other nearby buildings, which extend to three storeys by virtue of rooms in their roofs, Nos.5 and 7 have reduced floor areas and smaller windows at attic level. Although the buildings and gaps between are quite varied, there is an informal rhythm to the street which, while not important to the narrower setting of the listed building, does contribute to the character and appearance of the conservation area and to this part in particular.
23. The original parts of Nos.5 and 7 date from the late 19th to early 20th century. No.7 is simpler in style, suggesting a later date, but both appear on the 1908 map. Although unexceptional in itself, it was agreed that No.5 makes a positive contribution to the conservation area and that its loss would cause some harm. The degree of harm was not agreed⁶. I have studied the age, form, style, materials, detailing, quality, degree of alteration and extension, and the prominence of the buildings in the Conservation Area. From an examination of all these matters, and the appellant's checklist⁷, caveats and all, I assess that the harm from the loss of the Collina House Hotel would be significant, albeit less than substantial with regard to the test in NPPF 132. I find that the loss of No.7, and the complete infilling of the gap between the two buildings above ground floor level, would add to this harm.
24. The proposals would comprise a single block to replace both Nos.5 and 7. The external envelope would not be any higher or extend any further in any direction than the furthest points of the two existing buildings. Conditions could secure high quality materials and details. On the other hand, the proposed block would have higher eaves and reach the limits of the existing buildings far more often such that the volume would be considerably larger. The second floor in particular would cover far more of the footprint of the building compared with the existing buildings on the site. Although set into the roof in a number of places, the top storey would generally include similarly sized windows to those on the lower floors so that the block of flats would appear far more like a three-storey building than the existing or its neighbours.
25. It was explained to me that the design is such that the scale and external materials in the central section would be subservient to the sections on either side so that, when viewed from directly opposite, and as shown on the front elevation, the effect would be of two linked buildings rather than one large block. It was argued that this would be sympathetic to the character of the road and to this part of the conservation area. I also studied the two existing blocks of flats nearby within the Conservation Area, at Oaks Gate and Elmfield Place, and how they now contribute to its overall character.

⁶ Brown para 6.21. Cox in XX identified No.5 as making an important contribution, and the loss of Nos. 5 and 7 as harming the conservation area.

⁷ Brown para 6.19 with reference to Table 2 of the Historic England document, *Understanding Place: Conservation Area Designation, Appraisal and Management* – see ID7

26. I accept that, up to a point, the drawings recognise the need for the proposals to reflect the two buildings which would be replaced. They do this through the change in height and materials, with a lower section of roof at the centre, identifiable on the site plan, and with more glazing and a slate roof to the front elevation. However, the roof would not normally be viewed from above and the front would mostly be seen in oblique views, when travelling up and down East Hill, so that the true front elevation in the drawing would be only a small part of the experience. When approaching from the west, the separation would only feature on the top floor and, largely concealed behind a full height projecting window under a flat roof, would not be apparent until close by, undermining the effect of this feature. From the east, the separation would hardly figure at all. The upshot of this would be that the proposals would appear very much as a large, unrelieved block of flats. This effect would be accentuated by the long flank elevations, albeit relieved in part by planting.
27. Added to this harm would be the somewhat arbitrary arrangement of gables, balconies, roof forms and fenestration, with little regard to proportion. The Council objected to some of the finer detailing, which could be overcome by conditions, but also to the flat roof dormer windows, while a neighbouring resident described the scheme as: *overly 'fussy' and confused ... complex roof forms with many levels, intersections, cut outs ...*⁸. I acknowledge that this design would create extensive articulation, in the sense of lots of ins and outs in the treatment of the front façade, but the inconsistent nature and seemingly arbitrary arrangement of forms would lack any elegance or finesse. The contrast with East Hill House would be quite stark. The result would be that the proliferation of forms would accentuate the overall bulk of the building as a whole rather than break it up into separate halves as intended.
28. With regard to the design of Oaks Gate, this was described in the Report to Committee⁹ as *a modern one, aiming to interpret local architectural forms and materials and with form and proportions ... in keeping with older properties in the road*. It was consequently recommended for approval. At Elmfield Place¹⁰, while accepting that the design was *derivative in its approach* and that *an accomplished modern design would be refreshing* (as can now be seen at Oaks Gate) the Inspector also found that it would be *overall, well composed, proportioned and detailed*. I agree and I find that the top floor windows all have the appearance of being set well into the roof, more akin to attics, and that there is some integrity to that building as a whole.
29. For the above reasons, I find that the proposals before me would share few, if any, of the beneficial attributes and architectural qualities which make Oaks Gate and Elmfield Place acceptable within the conservation area, even without reference to any previous buildings on those sites. Instead the scheme would amount to poor design which would cause very significant, if slightly less than substantial, harm.
30. Taken with the loss of two well proportioned and attractive buildings, I conclude on this issue that the scheme would harm the character and appearance of the Conservation Area as a whole and this part in particular. The proposals would be contrary to NPPF chapters 7 and 12, which deal with design and conservation; with policies CS1 and CS9, which aim for high quality

⁸ Spiller Associates on behalf of Mrs Gillian Cottrell

⁹ N Brown appendix ANB3

¹⁰ Ibid appendix ANB4: Appeal ref. APP/E2205/A/02/1096832

design; with saved Local Plan policy EN16, which sets criteria for conservation areas; and with the statutory duty under s72 of the LB&CA Act (to which considerable importance and weight must be afforded) that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. I shall therefore balance this harm against the public benefits from new accommodation for the elderly.

Privacy and outlook

31. Neighbouring properties to the rear include the bungalows at Garden Cottage, Esperanto, 16 and 18 Golden Square, Little Birches and Pump Field House. I assessed the proposals from a selection of these dwellings and from the upper floors of the appeal site itself. I also visited The Limes, alongside No.7, and noted the relationships with the sitting room and garden in particular. A drawing marking the separating distances¹¹ was agreed between the main parties. There was no allegation of any breach of any adopted standard.
32. To the rear, the existing single storey building to the rear of the hotel backing onto Garden Cottage would be demolished allowing more light into the garden than at present. At the same time, the proposed apartment block would be larger facing the neighbouring garden and the demolished building would be replaced with parking. On balance, and subject to landscaping details which could be controlled by conditions, I find that the benefits from more light to the garden would offset the harm to the residents of Garden Cottage from a more developed outlook and any noise and disturbance from parking.
33. Esperanto backs onto an area of parking with a planning permission for a carport which has been implemented at ground level. I find that the considerations here would be comparable with those at Garden Cottage and that on balance there would be little overall harm.
34. I was not able to inspect the gardens to Nos.16 and 18 Golden Square but note that these currently back onto the garden to No.7 and would similarly back onto the proposed garden. Although the outlook from here would be of a greater development than at present, the separating distances would be similar to those for Garden Cottage and Esperanto. Overall, I find that both would be acceptable.
35. Little Birches and Pump Field House stand further away but rise to two storeys. Consequently, as I saw, there would be an impact on the views from the upper floor windows from where it is, and would be, possible to see over the fences and hedges to the appeal building. Nevertheless, given the greater separating distances involved compared with those to the bungalows, and my conclusions above, I find that the degree of harm would not be unacceptable.
36. From The Limes, the proposed flank wall would run roughly along the same line as the existing side elevation to No.7, and would be taller to the eaves, but more of the wall would be set back. The extended rear wall would be set back even further. The existing side bedroom window with clear glass would be replaced by one to a kitchen with a further kitchen window to the floor above. Both these would have obscured glass to their lower sections to prevent overlooking. To the front, there would be a bay window in a comparable position to the existing façade with a balcony beyond.

¹¹ Inquiry Document 3

37. In my assessment, given the balance of set backs, the outlook from The Limes would not be severely harmed by the replacement flank wall. While there could be some perception of overlooking from the proposed kitchens, the reality would be greater privacy than at present. Although it would be possible for future residents to lean out from the front balcony, the reality is that this would be unlikely. To the rear garden there would be more building visible within its outlook but the impact on views and daylight, including the evening sun would be marginal.
38. In none of the above circumstances would the effect justify dismissal. Indeed, the designer has made some efforts to avoid undue harm to the amenities of residents of adjoining properties and I accept that there would be no conflict with relevant planning policies.

Amenity space

39. Few of the apartments would have their own balconies but the proposals do include a home owners' lounge with doors leading out to an area of garden to the rear of the apartment block. The small existing terrace at the front would remain. The Council does have adopted standards for private outdoor space¹² but I accept that the requirement should be different for the elderly and that quality is at least as important as quantity. Subject to details, the area to the back could include a reasonable sized area of lawn and tables and chairs for sitting out. While it would be shaded in the morning, and when the sun is low in the sky, at other times it could potentially be a pleasant space despite its limited size. Although small for the number of apartments, I have no reason to doubt the appellant's assertions, based on extensive experience, that spaces of such a size are generally regarded as sufficient for the type of residents typically accommodated in their blocks of apartments.
40. Finally on the issue of the amenity of future residents, I noted the small size of the proposed lift and the potential difficulties in the, not unlikely, event that undertakers may be required to attend an apartment on an upper floor¹³. While not a matter to which I give any weight in my overall balance, this concern does nothing to dispel my earlier conclusion that the proposals would amount to poor design.
41. Overall on this issue, I conclude that the proposals would provide adequate amenity for future residents and would comply with the general requirement in NPPF 17 (bullet point 4) *to secure ... a good standard of amenity for ... future occupants of ... buildings.*

Sustainability

42. With regard to the balance of roles to be struck in NPPF 7, there was no dispute that the provision of 22 retirement homes in the town would be a substantial benefit. Housing local elderly residents in apartments would also be likely to free up larger dwellings in the area. There would be a policy compliant contribution towards affordable housing adding to these social benefits. There would be economic benefits from construction and additional spend in the town

¹² Residential Space and Layout SPD (an adopted document within the Council's Local Development Framework)

¹³ In response to my question, I was told that it was standard practice in the appellant's homes to leave the matter of removing any occupiers, when the time comes, to undertakers, and that as, for whatever reason, the lift would be too small for a trolley or coffin, removal from upper floors might be in a seated position and entail the use of body bags and/or vehicle sack trucks.

but I consider that these would be at least offset by a reduction in spend from tourists. On the environmental role, there would be harm to the conservation area both as a result of the loss of buildings which provide a positive contribution and the proposals which would amount to poor design. On balance, considering all the relevant policies in NPPF 18-219, I conclude that the harm would outweigh the benefits and that the proposals would not amount to sustainable development.

Conclusions

43. For the reasons given above, and having regard to all other matters raised, I give limited or no weight to any harm to either the tourist industry, the setting of the listed building, or the living conditions of neighbouring or future residents. Nevertheless, the public benefits of new retirement homes, and a contribution towards affordable housing, would not outweigh the combined harm to the conservation area. The scheme would not amount to sustainable development but would conflict with the development plan and the statutory duty and so the appeal should be dismissed.

David Nicholson

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant of Counsel	instructed by the solicitor, Ashford Borough Council
He called	
Sarah Barber	Ashford Borough Council
Allan Cox	Allan Cox, Built Heritage Consultant
Stephanie Andrews	Ashford Borough Council

FOR THE APPELLANT:

Rupert Warren QC	instructed by The Planning Bureau
He called	
Andrew Brown	Woodhall Planning + Conservation
Patrick McConkey	bdb design
Nick Barber	Taylor's Business Surveyors & Valuers
Matthew Shellum	The Planning Bureau

INQUIRY DOCUMENTS (ID)

ID1	Appellant's opening statement
ID2	Signed and dated Planning Obligation
ID3	Plan with dimensions to adjoining properties
ID4	Council's deferred contributions bundle
ID5	Council's opening remarks
ID6	Planning permission for garage
ID7	Historic England documents: Understanding Place: Conservation area designation, appraisal and management; Historic Environment Good Practice Advice in Planning 2: Managing Significance in Decision-Taking in the Historic Environment; and Historic Environment Good Practice Advice in Planning 3: The Setting of Heritage Assets
ID8	Revised suggested conditions
ID9	Council's closing submissions
ID10	Appellant's closing statement