

Appeal Decision

Site visit made on 3 January 2017

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 16th January 2017

Appeal Ref: APP/B1740/W/16/3159799

Land rear of 38 Southampton Road, Lymington, Hampshire SO41 9GG

- 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 Mr H Agnew against the decision of New Forest District Council.
 - The application Ref 16/10372, dated 16 March 2016, was refused by notice dated 11 May 2016.
 - The development proposed is the erection of a single dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed dwelling on the character and appearance of the area including the setting of the Lymington Conservation Area and on the living conditions of neighbours with particular reference to privacy.

Reasons

Character and Appearance

3. The site comprises approximately the rear half of No 38's back garden, No 38 being a two-storey pitched roof detached house like most of the other buildings on this side of Southampton Road, the main A337 running north out of the town. The site is accessed from a drive off Avenue Road, which also gives access to No 40's garage adjacent.
 4. Part of the site directly borders Lymington's Sports Ground, which lies within the Conservation Area. As well as No 40's pitched garage roof, the roofs of the garage courts at Halyard House are noticeable in views from the Sports Ground, as are the buildings on Avenue Road and the houses on Southampton Road. This includes Halyard House and the higher flats on the north side of Avenue Road, which would be viewed as a backdrop to the proposed dwelling.
 5. However, the Council describes the importance of the margin of garden land around the dwellings backing onto the Sports Ground and points out that there are only single-storey ancillary buildings within this area. With the exception of the two-storey detached building behind 42 and 44 Southampton Road occupied by the vets and a first floor flat the Council is correct. But that building is some way away from the Sports Ground and is not prominent in the view from the Conservation Area.
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6. The margin of garden land around the Conservation Area in my opinion is crucial to its setting, not least because of the openness of the Sports Ground itself. Retaining views of such garden land from the Sports Ground and views over it towards the Sports Ground from the dwellings in Southampton and Avenue Roads are therefore important. I acknowledge the surface car park at the northern end of the Sports Ground but this has no effect on the openness of the land here.
7. The appellant draws my attention to the new houses off Avenue Road to the north of the Fire Station, which can also be seen from the Conservation Area and which do not follow the main street frontages of Southampton and Avenue Roads. However, these new dwellings are accessed off a cul-de-sac giving access to Oberland Court and the Sports Ground. Such development accessed off a public highway is not comparable to the appeal proposal, which would be accessed off the narrower private access drive. The proposed dwelling would be closer to and therefore more prominent from views in the Conservation Area than those new houses, which fit comfortably into their urban context.
8. Unlike the adjacent garage and garage courts the new dwelling would be a full two-storey building. It would be prominent in views from and towards the Conservation Area because of its position and height relative to other structures in this margin of garden land around the Sports Ground. For these reasons it would significantly harm the character and appearance of the area and the setting of the Lymington Conservation Area. This setting is an important element of its significance as set out above.
9. I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas¹. For the above reasons the proposed development would fail to preserve the character and appearance of the Lymington Conservation Area. Relevant case law dictates that I must give considerable importance and weight to harm to designated heritage assets².
10. The harm would be less than substantial and in such circumstances paragraph 134 of the National Planning Policy Framework (NPPF) advises that such harm should be weighed against the public benefits of the proposal. There are no such benefits beyond the delivery of one additional dwelling, an insignificant benefit given the Council's undisputed 8.7 years supply of housing; the benefits would be purely private ones to the appellant.
11. Policies CS2 and CS3 of the New Forest District Council Core Strategy (CS) together require all new development to contribute positively to local distinctiveness and sense of place, be appropriate and sympathetic to its setting in terms of scale, height, density, layout, appearance, materials, and its relationship to adjoining buildings. For the above reasons the proposed dwelling would fail to comply with these development plan policies, as well as with Section 12 of the NPPF.

Living Conditions

12. There would be two windows at first floor level in the kitchen/dining area of the new dwelling facing towards the rear elevations and gardens of the

¹ S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

² Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137

Southampton Road houses. Although the distance between the nearest facing habitable room window (in No 40) would be about 20m I consider that the owner/occupiers of No 40 have a reasonable expectation not to be overlooked in this way. These windows would in any case directly overlook the private rear gardens of Nos 36, 38 and 40 at close quarters especially that of No 40 and this would significantly affect neighbours' living conditions. I accept that these houses obliquely overlook each other's rear gardens but that is customary in residential areas and does not justify additional overlooking from the opposite direction resulting from backland development.

13. The appellant has stated that he has no objection to these windows being obscure glazed because their purpose would be to light the kitchen/dining area. However, the need to obscure glaze windows to what would be likely to be the most well used part of the new dwelling indicates that the development would be inappropriately sited on a piece of garden land too small to accommodate it. Occupiers of such a dwelling should and would expect to have a reasonable outlook, and this would not be the case if these windows were to be obscure glazed.
14. The Council and residents at 5 Halyard House and 36 Southampton Road also suggest there would be inappropriate overlooking from the proposed first floor terrace and the full height glazing to the dwelling's first floor lounge. However, both the terrace and this window would be at the far eastern part of the building. The nearest part of the terrace would be over 20m from the terrace of the nearest flat at 5 Halyard House and views would be over the roof of the garage court, which would not result in a significant diminution of privacy to that flat's occupiers. There would be some oblique overlooking of No 36's garden from the lounge window but this would only be of the rear section of the garden, not the part of it most likely to be used for sitting out in the summer and hence would not significantly affect these neighbours' living conditions.
15. Nonetheless, I conclude, for the reasons given above, that the overlooking of the rear windows of the house at No 40, and the gardens of Nos 36, 38 and 40 from the two proposed first floor kitchen/dining area facing windows would significantly harm the living conditions of the occupiers of those neighbouring dwellings. It would be unreasonable to condition that such windows should be obscure glazed.
16. CS Policy CS2 states that development shall not cause unacceptable effects by reason of visual intrusion, overlooking, shading, noise, light pollution or other adverse impact on local character and amenities. For the above reasons the proposed dwelling would fail to comply with this Policy, as well as with relevant policy in the NPPF.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

Nick Fagan

INSPECTOR