
Appeal Decisions

Site visit made on 26 September 2017

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 25th October 2017

Appeal Ref: APP/E1210/W/17/3181257

3 Rothesay Drive, Highcliffe, Christchurch, Dorset BH23 4LB

- 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 Mrs L Dykes against the decision of Christchurch Borough Council.
 - The application Ref 8/16/2235/HOU, dated 25 October 2016, was refused by notice dated 4 April 2017.
 - The development proposed is the formation of a vehicular access onto Lymington Road.
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Appeal Ref: APP/E1210/Y/17/3177018

3 Rothesay Drive, Highcliffe, Christchurch, Dorset BH23 4LB

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mrs L Dykes against the decision of Christchurch Borough Council.
 - The application Ref 8/16/2236/LB, dated 25 October 2016, was refused by notice dated 4 April 2017.
 - The work proposed is the formation of a vehicular access onto Lymington Road.
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Decision

1. Both appeals are dismissed.

Main Issues

2. The main issues in both appeals are whether the proposed vehicular access would:
 - (a) harm the Grade II listed brick wall fronting Lymington Road;
 - (b) result in the significant loss of trees and harm the verdant character of the area; and
 - (c) create an unacceptable increase in general noise and disturbance to neighbours at 165 Lymington Road and 1A and 2 Rothesay Road.

Reasons

The Listed Wall

3. Rothesay Drive is a cul-de-sac with two (eastern and western) arms located within the original grounds of Highcliffe Castle, to which it also gives access. The wall on Lymington Road was probably built during the remodelling of Highcliffe castle in 1830-4, according to its separate listing description. This

description also states that the wall was built using a particular style of large interlocking bricks patented by Caleb Hitch of Ware, Hertfordshire in 1828; the bricks were laid on edge and were claimed to be more economical than standard bricks but because of the complicated form of brick required to turn a corner many different patterns had to be produced; consequently they were not widely used outside Ware and are very rare.

4. The wall extends to a length of approximately 300m on both sides of Rothesay Drive, as far east as the Highcliffe Castle Golf Club and as far west as The Rothesay B&B at 175 Lymington Road. Some sections of it are missing, for instance at No 167 where it has been replaced with a Leylandii hedge and at the 45° visibility splays at the entrance to Rothesay Drove where it has also been replaced by planting in front of a high close-boarded fence. Other sections of it, principally the majority of the car park and frontage of the Golf Club, have been rebuilt since the war using standard bricks, which as the listing description also states are not of special interest.
5. There are a number of vehicular accesses to the properties that front Lymington Road to the east of Rothesay Drive, as described in the appellant's Design and Access Statement – those at Nos 165-175 (odd), including a wide dual access at Nos 171-173 (odd). The wall is characterised by V-shaped buttresses on both its inside and outside facing the road; some of these have been damaged. Some sections of the wall are missing the original top two courses and the distinctive header bricks and some of it is not as wide as originally constructed.
6. This includes the section of No 165's wall that is proposed to be demolished and rebuilt with 45° splays to facilitate the vehicular access. The appellant also states that the proposal will allow the wall to be rebuilt at this location to something like its original height, which is about 1.5m.
7. However, the wall is a listed structure. I have a statutory duty to have special regard to the desirability of preserving it or its setting or any features of special or historic interest which it possesses¹. I acknowledge that the section of wall to be removed and rebuilt is not as the wall was originally built and as such is of lower merit in terms of its fabric than other original remaining sections of the wall. But an essential part of the wall's character is its straight linear alignment along the front of what was once the northern boundary of Highcliffe Castle.
8. The proposal would punch yet one more hole into the wall, harmful to its alignment. The fact it would be rebuilt via the 45° splays to the new access would not sufficiently compensate for that harm, even though it would be rebuilt higher at this point. The presence of seven other vehicular access points, which also have a harmful effect on the listed wall, is not a valid argument for adding to such harm. The existing breaches in the wall are not so significant that its essential visual character and enclosing function has been damaged beyond recognition. But, as a result of these existing breaches, it is important that such character and function is preserved by limiting as far as possible any further such breaches.
9. I conclude for the above reasons that the breach in the wall by the new vehicular access would cause 'less than substantial harm' as defined by

¹ S16(2) & 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990

paragraph 134 of the National Planning Policy Framework (NPPF) to the significance of the listed wall. Such harm should be weighed against any public benefits of the proposal. As I understand it the appellant wishes to have a more direct access to the building in her back garden, which houses an indoor swimming pool. I acknowledge that such access, including for repair and maintenance purposes, would be more convenient because there appears to be no vehicular access from the Rothsey Drive frontage. However, the outbuilding and swimming pool have clearly been there for some time and there is no suggestion that the lack of such a vehicular access prevents them from being used. In any case, more convenient access to a private swimming pool cannot reasonably be said to be a public benefit.

10. Policy HE1 of the Christchurch and East Dorset Local Plan Part 1 Core Strategy 2014 (CS) states that heritage assets will be conserved and where appropriate enhanced for their historic significance. This Policy follows national policy in NPPF paragraphs 131, 132 and 137. For the above reasons the proposal would comply neither with Policy HE1 nor with this relevant NPPF policy.

Trees

11. The proposal involves the felling of the two mature Norway Maples identified as T1 and T2 in the appellant's submitted Arboricultural Method Statement. The stated reason for this is because T1, the eastern tree, has significant decay and poses an unacceptable risk to the highway whilst T2 relies on it for companion shelter and would become dangerously exposed following its removal. The Council's Tree Officer has made no objection to their removal, even though they appear to be covered by a Tree Preservation Order (TPO). A number of other trees, principally smaller Yews, would also be removed but these are poor specimens constrained by the canopies of T1 and T2 and there are no objections to such.
12. T1 and T2 do overhang Lymington Road but their canopies are reasonably high and they are two of several trees that do so in the vicinity of the site. The Council does not challenge the acoustic tomography that is said to reveal significant decay in T1 and I have no reason to do so, albeit both trees currently look in reasonable health in terms of their canopy and leaf cover.
13. But I question whether they both need to be removed on safety grounds and whether indeed their removal would be currently being proposed if it was not required to facilitate the proposed new vehicular access. In any case T2 is sited within the garden of 2 Rothsey Drive and so its removal is not in the gift of the appellant. I also question whether, even if T1 had to be removed now, it would be necessary to remove T2 – I consider the argument that it is dependent on T1 for shelter to be a matter of subjective, albeit expert, opinion.
14. More fundamentally, both these TPO trees contribute considerably to the green character of this part of Highcliffe and it does not appear that they are in any serious danger of falling. As such I conclude that their loss would be currently unnecessary and would harm the verdant character and appearance of the area.
15. CS Policy HE2 requires development to be compatible with or improve its surroundings including in terms of its relationship with mature trees. For the above reasons it would not do so and would consequently fail to comply with this Policy.

Noise and Disturbance

16. The new drive and parking/turning area would be fairly close to the conservatory on the western side of 165 Lymington Road and there would undoubtedly be some additional noise from vehicles and from the opening and closing of car doors and general noise from people using it. But this would be little different to the existing noise resulting from the use of the drive of its neighbour at No 167. Such incidental low key noise resulting from residential use is to be expected in a residential area.
17. No 2 Rothesay Drive has an outbuilding or two at this end of its rear garden but these buildings do not appear to encompass any element of accommodation and I see no reason why the proposed access drive would have any significant impact on the living conditions of its owner/occupiers. There would be no discernible impact on the neighbours at 1A because it is separated from the site by the rear garden of No 2.
18. For these reasons I conclude that there would be no unacceptable increase in general noise and disturbance to neighbours at 165 Lymington Road, 1A and 2 Rothesay Road. CS Policy HE2 also requires development to be compatible with the amenities of nearby properties and the proposal would comply with this aspect of the Policy.

Conclusion

19. Despite there being no significant harm to neighbours' living conditions arising from the proposed development, it would harm the verdant character and appearance of the area and harm the significance of the listed Hitch wall. For these reasons the appeals should be dismissed.

Nick Fagan

INSPECTOR