



Appeal Decision

Site visit made on 11 February 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/V1260/D/19/3241134
99 Mudeford, Christchurch BH23 4AE

- 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 Stephen Bowler against the decision of Bournemouth, Christchurch and Pool Council.
 - The application Ref 8/19/1163/HOU, dated 27 July 2019, was refused by notice dated 23 October 2019.
 - The development proposed is 2 x Garden wall to form courtyard. Wall one 5.6 mtrs at 2.4 high to match garage. Wall 2 1.8 mtrs at 1.8 mtrs high.
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Decision

1. The appeal is allowed, and planning permission is granted for 2 x Garden wall to form courtyard. Wall 1 6.3 mtrs at 2.4 high to match garage. Wall 2 2.1 mtrs at 1.8 mtrs high at 99 Mudeford, Christchurch BH23 4AE, in accordance with the terms of the application, Ref 8/19/1163/HOU, dated 27 July 2019, subject to the following conditions.
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in strict accordance with the following approved plans: Proposed Block and Location Plan; Large Plan; Block Plan; Existing Plan; Proposed Plan; Existing South East Elevation; and Proposed South East Elevation.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Procedural Matter

2. I have used a different description of development in allowing this appeal by referring to measurements on the submitted drawings and in the officer's report. I consider that this more accurately reflects the development proposed. My doing so, does not, in my view, prejudice any of the main parties.

Main Issue

3. The effect of Wall 1 on the living conditions of the occupiers of No 97 Mudeford, with particular reference to outlook and daylight.

Reasons

4. The appeal site comprises a semi-detached dwelling located in a residential area of Christchurch. Together with the adjoining dwelling at No 97, the property has a T shape building footprint. Both properties face onto a rear courtyard area that is enclosed by the side elevation and garage of the appeal property and the rear elevation of No 97. The rear elevation of No 97 has a window facing the courtyard that serves a kitchen. A rear access into the adjoining dwelling is obtained from the courtyard via some steps and a rear door into the kitchen, resulting in it being at a lower land level to the courtyard area.
5. Wall 1 will have a height of 2.4m and would be adjoined by an access gate which would be shorter in height. The proposed wall/gate would be constructed in front of and within 1.5m of No 97's kitchen window and at a slightly elevated land level. A further wall (Wall 2) is proposed to adjoin the appeal dwelling's attached garage.
6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the appeal be determined in accordance with the provisions of the development plan, unless material considerations indicate otherwise.
7. Policy H12 and HE2 of the Christchurch and East Dorset Local Plan 2014 collectively require proposals, amongst other considerations, to be compatible or improve the relationship with their surroundings and this includes the residential amenities of neighbours.
8. My site visit included an assessment of the proposal from within the kitchen of No 97. From within this room Wall 1 would significantly enclose the small area incorporating the access steps and have an overbearing effect on occupiers when viewed from within the kitchen. This would also significantly reduce the amount of light entering the room. Nevertheless, opening the proposed gated entrance would still allow for light to enter the room and to diminish the enclosing effect of the proposed boundary by opening up views into the courtyard. Moreover, even with the presence of Wall 1, daylight would still be able to enter the kitchen via existing window openings and rooflights.
9. Whilst Wall 1 would not wholly comply with Policies H12 and H2 of the Local Plan, the Appellant has pointed out that the construction of a 2m high wall at the same location could be erected without the need for planning permission on the basis that it would be permitted development¹. I am satisfied that if the appeal proposal were not erected, there is every likelihood that such a wall up to 2m in height would be built having regard to the Appellant's desire to improve privacy in the courtyard. I judge that, the proximity of a 2m high wall elevated above the kitchen window of No 97 would have a comparable effect and sense of enclosure upon the occupiers when compared to the appeal proposal which is 0.4m taller. Furthermore, a 2m high wall would limit daylight entering the window to a similar extent, given the close siting, scale and elevated position it would have. Consequently, I regard the likely erection of such a fallback as a material consideration which would, in this case, justify making a decision which is not in accordance with the development plan.

¹ In accordance with Schedule 2, Class A of Part 2 (Minor Operations), Town and Country Planning (General Permitted Development) (England) Order 2015

10. Given the above considerations, whilst the development does not comply wholly with the provisions of Policies H12 and HE2 of the Local Plan, I have given significant weight to the fall-back position and that the effects of the proposed development on living conditions of the occupiers of No 97, with particular regard to outlook and daylight, would be comparable. Despite the conflict with the policies of the Development Plan, the material consideration of the fall-back position indicates that the appeal should be allowed.

Other Matters

11. The appeal site is located within the Mudeford Quay Conservation Area (MQCA). The Council considers that the proposed walls are satisfactory in design and discretely located. Accordingly, they have judged that there would be no adverse impact on the character and appearance of the MQCA. I have no reason to disagree with the Council's assessment in this regard.
12. The appeal site is a locally listed building, along with the adjoining dwelling at No 97. The Council have not raised any specific concerns with regard to the effect of the development on these heritage assets. I also have no concerns with the proposed development in this respect.

Conditions

13. I have had regard to the Council's suggested conditions, amending them where necessary for clarity and to ensure compliance with the tests set out in paragraph 55 of the Framework.
14. Planning permission is granted subject to conditions that relate to the standard time limit for commencement of development and a schedule of plans that the development relates to. These are necessary for the avoidance of doubt and in the interests of certainty. A condition relating to the construction of the walls in materials to match is necessary to safeguard the character and appearance of the appeal dwelling and surrounding area.

Conclusion

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

R. E. Jones

INSPECTOR