
Appeal Decisions

Site visit made on 22 September 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 02 November 2020

Appeal A: APP/P2114/W/19/3241349

11 Lugley Street, Newport, Isle of Wight PO30 5HD

- 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 Carlton Properties Ltd against the decision of Isle of Wight Council.
 - The application Ref 19/00233/FUL, dated 22 February 2019, was refused by notice dated 11 July 2019.
 - The development proposed is described as conversion to form 4 self contained flats.
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Appeal B: APP/P2114/Y/19/3241350

11 Lugley Street, Newport, Isle of Wight PO30 5HD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
 - The appeal is made by Carlton properties Ltd against the decision of Isle of Wight Council.
 - The application Ref 19/00234/LBC, dated 22 February 2019, was refused by notice dated 23 August 2019.
 - The works proposed are described as conversion to form 4 self contained flats.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. As set out above, there are 2 appeals on this site. Each relate to the same scheme but address separate applications relating to planning permission in the case of Appeal A, and listed building consent in the case of Appeal B. I have considered each on its individual merits, however, to avoid duplication I have dealt with the Appeals together, except where otherwise indicated.

Main Issues

4. The main issues are:
 - in respect of Appeal A, the effect of the scheme on the living conditions of future occupants of Unit 2, and the users, owners and employees of 13 Lugley Street, with particular regard to privacy; and

- whether the scheme would preserve a Grade II listed building, 11 Lugley Street, its setting, or any of the features of special architectural or historic interest that it possesses.

Reasons

Living Conditions

5. No 11 and No 13 neighbour and adjoin one another, and share a building located at the back of the plot on which No 11 stands. The layout is such that space to the rear of the building at the back of the plot forms part of the outdoor amenity space attached to No 13. This space is partly roofed over, with the roof directly adjoining the rear elevation of the building at the back of the plot.
6. At present, the ground floor of the building at the back of the plot has a single non-openable obscure glazed window in the rear elevation. This is located beneath the roof attached to the rear elevation, and therefore looks directly into the covered space. As proposed, this window would serve the lounge/kitchen of Unit 2. If the window was clear glazed, anyone using the covered space to the rear would be able to see straight in. Likewise, anyone within the lounge/kitchen would have a direct view of anyone using the covered space. Whilst users of the covered space would thus suffer a loss of privacy, future occupants of Unit 2 would lack privacy from the outset.
7. The space to the rear is currently used by the business at No 13, and use is said to occur only during business hours. Given the non-residential use, any harm caused by overlooking from Unit 2 would be intrusive, but less harmful than views from the space to the rear into the main living space of Unit 2. In terms of the latter, there is no guarantee that future occupants of Unit 2 would be out during business hours. Business hours, and the way in which the space to the rear is used, could themselves each change in the future. At all times when the space to the rear was in use, and Unit 2 was occupied, the lack of privacy within the main living space of Unit 2 would be unacceptable.
8. The window could continue to be fixed shut and obscure glazed. However, this would mean that there would be no clear outlook from the ground floor of Unit 2, and little means of natural ventilation. Additionally, when taking into account the covered nature of the space to the rear, even less natural light would reach the interior than would otherwise be the case. This would not therefore be an acceptable solution. No other solution has been proposed.
9. The ground floor window on the street frontage faces directly onto the pavement, therefore allowing passing pedestrians to glance in. This is typical within built-up areas, and particularly so of shop windows. The relationship created between Unit 2 and the space to the rear would be different. This because the window in question faces into a private covered amenity space, rather than onto a public pavement, and thus the use of these spaces is of both different type and character.
10. The Council also raised concern in relation to an obscure glazed window set in the first floor side elevation of No 13. This is said to serve an office. This window faces onto a roofed over space between the main frontage building at No 11, and the building at the back of the plot. Given the pitch of the roof, it does not form a practical amenity space, even if use in this context is said to

occur. Direct access onto the roof, including to the space immediately adjacent to the window, is nonetheless currently possible.

11. The scheme would see the pitched roof replaced with a flat roof, across which Unit 2 would be accessed. Future occupants of Unit 2 would therefore make daily use of the roof as a circulation space. A light well would however be formed adjacent to the window, meaning that users of the roof could not stand immediately outside it. Views through the window would not otherwise be possible given that it is obscure glazed. In this regard the scheme would not give rise to any unacceptable effect on the privacy of users, owners and employees of No 13.
12. For the reasons outlined above I conclude that in respect of the ground floor window in the rear elevation of the building at the back of the plot, the development subject of Appeal A would provide unacceptable living conditions for future occupants of Unit 2, whilst additionally causing intrusion to users, owners and employees of No 13. The development would therefore conflict with Policy DM2 of the Island Plan: Isle of Wight Core Strategy (the IP), which, though not specifically outlining requirements in relation to living conditions, nevertheless broadly seeks to secure high quality design.

Listed building

13. Despite the Council's refusal of listed building consent, the decision notice issued in respect of Appeal B states that the proposed alterations would be acceptable. No reference to the listed building occurs within the decision notice issued in relation to Appeal A. Having regard to my duties under Sections 16(2) and 66(1) of the Act, and to paragraph 193 of the National Planning Policy Framework (the Framework), which states that great weight should be given to the conservation of designated heritage assets, I have however considered this matter further. In so doing I have also referred back to the parties for comment.
14. The list description is hard to fully reconcile with the building as it currently exists when viewed within Lugley Street. It also makes no mention of the once separate building to the rear of the plot. Nonetheless, insofar as it relates to this appeal, the special interest and significance of the listed building lies in the reported eighteenth century date of the main street fronting element, its likely background as a 2-up, 2-down urban cottage, surviving historic fabric, and the visual role the building plays within the streetscene as part of a larger group of listed buildings. In this context, the building to the rear, which may once have formed a separate dwelling of later date, derives chiefly from its association with the buildings on the street frontage.
15. The front elevation of No 11 is brick, laid in stretcher bond, and appears to be a later facing. Indeed, exposed fabric within is more mixed. At ground floor this includes elements of stonework, timber framing, and brick. Though the first floor has otherwise been previously refurbished, at ground floor extensive areas of lime plasterwork in poor condition survive. As the archaeology and origins of the building may be more complex than the front elevation suggests, considerable interest resides in the historic building fabric. In this regard, no detailed analysis of either the building or its fabric has been provided in support of the application.

16. Likewise, no detailed specification of the works that would be required to the fabric of the building in order to implement the proposed scheme, has been provided. The fact that the appellant has undertaken works to listed buildings elsewhere does not directly address the matter. 'Preservation' by 'dry lining' is otherwise referenced in the officer report, but not detailed on the plans or elsewhere in the submissions. It is otherwise unclear how dry lining would preserve the historic building fabric.
17. Consequently, it is not possible to fully assess the suitability of the works or their impact on the listed building, or therefore to conclude that they would in fact achieve its preservation. In this regard the imposition of conditions cannot satisfactorily address the matter, given that the Act does not provide scope to grant listed building consent in outline. Conflict therefore arises in relation to both the scheme's performance against the expectations of the Act, and in relation to paragraph 193 of the Framework, as set out above.
18. In view of my findings, and with reference to paragraph 196 of the Framework, I cannot be certain that the scheme would cause anything other than less than substantial harm to the significance of No 11. I attach great weight to this harm. In accordance with paragraph 196 it is necessary to balance this harm against the public benefits advanced in favour of the scheme.
19. The scheme would deliver 4 residential units, or a net increase of 3 units, in an accessible location within the Medina Valley Key Regeneration Area. This would make better use of currently vacant parts of the building, and serve what the appellant claims is a need for small dwellings. As outlined above however, the living conditions within one of the proposed units would be unacceptable. On this basis I cannot attach any weight to the social and economic benefits of housing provision.
20. As such, the harm that would be caused to the significance of the designated heritage asset would not be outweighed. In respect of Appeal A, this provides a clear reason for refusal of planning permission, and with regard to Appeal B, indicates that listed building consent should be refused.
21. For the reasons outlined above I conclude that the scheme would not preserve the special architectural or historic interest of No 11. With regard to Appeal A, and insofar as it is relevant to Appeal B, the scheme would therefore conflict with Policy DM11 of the IP which states that the Council will support proposals that positively conserve and enhance the special character of the Island's historic and built environment. With regard to Appeal A it would additionally conflict with Policy DM2 of the IP, which states that development proposals which preserve or enhance a heritage asset will be supported. In regard to both appeals, the scheme would otherwise fail to satisfy the expectations of the Act, and heritage policy set out within the Framework.

Other Matters

Conservation Area

22. The site is located in Newport Conservation Area (the Conservation Area). This is addressed by the appellant but not addressed in any detail by the Council. In view of the duty set out in Section 72(1) of the Act, it is nonetheless necessary for me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

23. Insofar as it relates to these appeals, the significance of the Conservation Area resides in the historic layout of the town, and the collection and interrelationship of historic buildings and spaces it contains. Within this context, for the reasons outlined above, No 11 makes a positive contribution.
24. The scheme would not entail any works that would be clearly appreciable from within the public realm. Only alterations to external openings could be viewed from No 13. These have not otherwise been identified as harmful to the listed building. As such, I find that notwithstanding the harm that has been identified in respect of the listed building, the scheme would not have any adverse effect on the significance of the Conservation Area. The Conservation Area would therefore be preserved.

European Sites

25. Planning permission in respect of Appeal A, was refused partly on the basis that no mitigation had been secured in respect of what the Council considers would be a likely significant effect on what is generically termed the 'Solent Special Protection Area', due to increased recreational pressure. Mitigation is set out in the Solent Special Protection Areas Supplementary Planning Document 2014, and consists of contributions to fund site access, management and monitoring works. The appellant indicated that a UU would be provided during the course of the appeal, however, none has been received. Had I been minded to allow Appeal A, I would have needed to address this matter in greater detail, carrying out an Appropriate Assessment as necessary. As I am dismissing the appeal for other reasons, no further consideration is required.

Affordable Housing

26. In respect of Appeal A, planning permission was also partly refused on the basis that the development would fail to make any secured contribution towards affordable housing. In this regard Policy DM4 of the IP sets out a requirement for housing developments of 1-14 units in Key Regeneration Areas to provide financial contributions towards affordable housing, with these set out within the Affordable Housing Contributions Supplementary Planning Document 2017.
27. The appellant again indicated that a UU would be submitted during the course of the appeal to address the Council's concerns, and none was received. Again, had I been minded to allow Appeal A, and the circumstances thus existed in which planning permission could be granted, I would have needed to address this matter in further detail. However, as I am dismissing Appeal A for other reasons, no further consideration is required.

Conclusion

28. For the reasons set out above I conclude that both Appeal A and Appeal B should be dismissed.

Benjamin Webb

INSPECTOR