



Appeal Decision

Site visit made on 16 November 2022

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2023

Appeal Ref: APP/F9498/W/22/3291591

**Garson House Care Home, No 7 Lee Road, Lynton, Devon, England
EX35 6HU**

- 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 Russell Boundy of Garson House Care Home against the decision of Exmoor National Park Authority.
 - The application Ref 62/41/21/034, dated 29 September 2021, was refused by notice dated 13 January 2022.
 - The development is a wooden garden summer house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form confirms that the development was been completed prior to submission and that the Council have assessed the scheme retrospectively. Whilst I observed that the summer house had been stained a dark brown colour, this has been acknowledged in the Council's statement of case. Therefore, I do not consider either main party will be prejudiced by determining the appeal scheme retrospectively.
3. Within my decision, I have taken into account that age is a relevant protected characteristic for the purposes of the Public Sector Equality Duty contained in Section 149 of the Equality Act 2010 (the PSED). The PSED requires due regard to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I refer to this matter further in the Planning Balance section below.

Main Issue

4. The main issue of this appeal is the effect of the summer house on the character and appearance of the area, taking into account its location with the Lynton Conservation Area (LCA) and nearby heritage assets.

Reasons

5. The appeal site is located within the LCA on Lee Road and close to three listed buildings. As a result, I am required by Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or

- appearance of that area and preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
6. Covering the extent of the town from the early twentieth century, the significance of the LCA, as set out in the Lynton Conservation Area Appraisal Document (2019) "is rooted in the transition from medieval village to a 19th century holiday resort and small town with a strong civic focus." Within the LCA, and particularly along Lee Road, there is a variety to the massing and height of the built form and a sloping topography with a contrasting openness and enclosure of the streets. On the appeal site side of Lee Road the built form of Garson House, Lynton Town Hall and the buildings beyond are set back from the highway creating a sense of openness in this part of the LCA.
 7. The appeal site comprises a substantial two storey detached former residential building, now the Garson House Care Home (Garson House). Garson House is identified within the Council's Officer Report as a Locally Important Unlisted Building and is therefore an undesignated heritage asset. Although alterations, including modern window frames, have been made to it, I consider its significance to be mainly derived from its substantial form, an octagonal double height turreted bay and an elevated relationship to Lee Road.
 8. Also on Lee Road, adjacent to the site, are three listed buildings comprising; the Town Hall (Grade II*); the former Methodist Church (Grade II*); and boundary wall, rails and war memorial (Grade II).
 9. From the evidence before me, including the listing descriptions, I consider the significance/special interest of the Town Hall is largely derived from its age, the quality of its Art Nouveau detailing and its civic function. I also consider the significance/special interest of the adjacent former Methodist Church to be largely derived from its age, the quality of its Art Nouveau detailing, and its civic function connected to its past use. Although separately listed, the boundary wall, rails and war memorial are located to the front of the Town Hall and, as such, they are experienced together. Therefore, their significance/special interest is largely derived from their association with the Town Hall and, in relation to the memorial, its function as a focal point for commemoration.
 10. The significance/special interest of these listed buildings is experienced in views in both directions along Lee Road and within their curtilages. The grand Town Hall creates a striking landmark feature which, combined with the former Methodist Church, provide contrasting architecture in the streetscene. Both buildings are set back from Lee Road, in elevated positions, further emphasising their prominence and civic importance. In these respects, the setting provided by the setback and elevated positions of the listed buildings makes a positive contribution to their significance/special interest. The architectural quality and civic importance of the listed buildings also make a significant contribution to the character and appearance of the area.
 11. Due to the sloping topography, the frontage of the appeal site is bounded by a stone retaining wall that has ground cover spilling over it. The elevated grassed area behind, including the mature trees within it, create a verdant character and appearance in this part of Lee Road. That verdant character softens the vistas towards the Valley of the Rocks Hotel, where the narrowed highway is enclosed by buildings, and towards the group of listed buildings in the opposite direction. Combined with their elevated position, the spacing of the trees provides pedestrians along Lee Road clear views into the garden area and

Garson House beyond. From vehicles immediately adjacent to the site, this view would be restricted by the height of the boundary wall.

12. The summer house is sited close to Lee Road, within the open garden area and set in a short way from the side boundary nearest to the Town Hall. It is predominately constructed from wood that has recently been stained a dark brown colour similar to the barge boards on the Town Hall, with dark felt roofing. It is not attached to Garson House and has a functional design with a typical summer house appearance. As such, I consider that is not an uncommon feature to a residential setting and therefore find that the significance of the Garson House is preserved. Nevertheless, the summerhouse is sited in close proximity to Lee Road. Moreover, even though a timber summer house is a common feature in a residential setting it contrasts with the built form in the immediate vicinity and appears incongruous in the street scene.
13. Given the timing of my site visit in November, the deciduous trees and bushes had lost some of their foliage and therefore only partially screened the summer house, particularly on the side boundary closest to the Town Hall. During other months of the year, when the existing trees and bushes are in full bloom, the summer house would be screened further, particularly to its rear. However, its elevated location and the curvature of Lee Road means that the summer house is clearly apparent in the vista towards the group of listed buildings, which includes the Town Hall, from outside the Valley of the Rocks Hotel when the landscaping is not in full leaf. Even during the summer months, it would be apparent in this vista, visible between the trunks of the trees on the frontage of the appeal site. As a result, the summer house introduces a built form feature into the verdant and lush part of Lee Road which materially erodes the contribution that its verdant and open character makes to the character and appearance of the area.
14. The incongruity of the summer house in the street scene also distracts from the architectural quality, civic importance and communal value of the group of listed buildings in the vista from Lee Road. The level of intervisibility would alter during the year due to the landscaping on the appeal site but as stated previously the summer house is apparent in the vista towards the listed buildings. Consequently, I consider that it harms the contribution that setting makes to the special interest/significance of the listed buildings. The special interest/significance of those listed buildings is therefore not preserved.
15. Whilst the garden is not devoid of structures, with a concrete service chamber/tool shed located close to the summer house, as this structure is set further away from the front boundary and of a significantly smaller scale, it is less prominent in the streetscene. Furthermore, I have limited information before me providing details of the age of the tool shed or the planning regime in place at the time of its construction.
16. I appreciate that the orientation of Garson House allows the garden area to form part of the care home service provision. Whilst the appellant considers there to be no level ground adjacent to the house which would provide an alternative location for the summer house, this does not justify unacceptable development. Additionally, the minimal use of glazing does not alter the prominence or visibility of the summer house.

17. Although a condition could be imposed requiring planting along the frontage to screen the summer house, this would take time to establish and also reduce the openness of this part of the LCA. Whilst the appellant may have discussed this approach with a Council officer, this does not bind the Council to a particular outcome. Given the proximity of the summer house to the road frontage and the isolated location of the structure away from Garson House, removing the veranda would not significantly change its effect on the streetscene.
18. I have found that the summer house preserves the significance of the undesignated heritage asset. However, I have found that it harms the character and appearance of the LCA and the special interest/significance of the listed buildings. In the language of the National Planning Policy Framework (the Framework), the development results in less than substantial harm to the significance of the designated heritage assets on the basis that the development would harm only part of their significance. In those circumstances, paragraph 202 of the Framework states that this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I have attached great weight to the desirability of avoiding any such harmful effect. I will return to this matter below.

Planning Balance and Conclusion

19. As advised by paragraph 202 of the Framework, less than substantial harm should be weighed against the public benefits of the development. It is a positive consideration that the summer house provides additional space for residents of the care home, their families and the staff. However, this does not amount to a public benefit that is available to the wider community, even considering the positive feedback from the community and medical professions about the service the care home provides. Additionally, although not as large, flexible nor desirable as the summer house, other indoor spaces where similar activities could be undertaken are available in the care home. Furthermore, any indirect public benefit from the reduced pressure on local NHS services due to the summer house is limited given the small scale of the care home. Therefore, I attach modest weight to the public benefits arising from the development.
20. Nevertheless, in my view, the weight attributed to the public benefits identified above does not outweigh the great weight to be given to the harm to the heritage assets. As a result, the summer house does not satisfy the requirements of the Act, paragraph 197 of the Framework and it conflicts with policies GP1, CE-S1, CE-S4, CE-S6, CE-D1 and CE-D3 of the Exmoor National Park Local Plan 2011-2031 (2017) (the Local Plan). These policies, amongst other aspects, require development to complement the distinctive character of the area, and conserve or enhance the significance of the Authority's heritage assets.
21. I also find conflict with Chapters 12 and 16 of the Framework in respect to the need for new development to be sympathetic to the character and appearance of its surroundings, including the historic environment.
22. On the decision notice, the Authority refers to Policy GP4 of the Local Plan. As this relates to the efficient use of land and buildings it is not determinative in this appeal. Similarly, Policy HC-S7 is not determinative as it refers to

proposals for new residential institutions and extensions to existing buildings, rather than standalone structures.

23. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning acts the determination must be in accordance with the plan unless material considerations indicate otherwise. For the reasons set out above, the development proposed is contrary to the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
24. The PSED explains that, advancing equality of opportunity involves having due regard, in particular, to considerations including the need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; and to take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
25. Clearly the Government restrictions and guidelines imposed as a result of the coronavirus pandemic have impacted on the daily operations of the care home and caused distress to residents, staff and their families. Given that Garson House is not a purpose built care home, I recognise the challenges the appellant has experienced to accord with the aforementioned restrictions. I therefore acknowledge that the summer house provides important operational, wellbeing and health benefits to the residents of the care home, their families and the staff working there. These benefits weigh in favour of the grant of planning permission.
26. However, this must be balanced against the harm I have identified above. Furthermore, I cannot be certain that these benefits could not be achieved by alternative means. Moreover, whilst the restrictions on the operation of the care home could change over time, the harm I have identified above would remain and could not be overcome through the imposition of conditions.
27. Having had due regard to the PSED and all matters raised, the harm I have identified above outweighs the benefits of the summer house in terms of eliminating discrimination against persons with the protected characteristic of age, advancing equality of opportunity for those persons and fostering good relations between them and others. Consequently, it is proportionate and necessary to determine the appeal in accordance with the development plan and to dismiss the appeal.

Juliet Rogers

INSPECTOR