



Appeal Decision

Hearing held on 16 May 2023

Site visit made on 17 May 2023

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/D1265/W/22/3313803

Land to South West of Stile Lane, Lyme Regis DT7 3HZ

- 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 Clinton Green (CGA Project Services Ltd) against the decision of Dorset Council.
 - The application Ref P/FUL/2021/05100, dated 25 November 2021, was refused by notice dated 28 June 2022.
 - The development proposed is the construction of 3no. dwellings and associated external works and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application describes the development as the “construction of 3 no. units of holiday accommodation and associated external works and landscaping”, and gives the site address as “Harbour’s View, Lyme Regis”. However, the descriptions of both the development and site address were altered during the course of the application’s determination to reflect more accurately the nature and siting of the proposals. Accordingly, the description of development and site address in the banner heading above are taken from the Decision Notice on the application that led to the appeal, the wording of which is also used in the appellant’s appeal form.
3. I issued a pre-hearing note and agenda to the parties on 24 April 2023, which included procedural guidance relating to the appeal, and gave an outline of the matters to be discussed.
4. At the hearing, the Council supplied an extract from a Landmark Trust document relating to Belmont and its grounds. This brief document is derived from publicly available information and adequate time was available in an adjournment for the appellant to consider its implications. The extract was discussed at the appropriate point on the agenda. Additionally, several applications relating to protected trees in the environs of the site were referred to in the appellant’s statements and discussed at the hearing. The Council and appellant supplied me with copies of the decision notices relating to those applications following the closure of the hearing. I consider that no prejudice would occur to the interests of any parties as a result of me taking the contents of these documents into account in my assessment of the planning merits of the appeal.

5. Although not forming one of the Council's reasons for refusal, the issue of land stability was referred to in the Officer Report on the application and in interested party comments relating to the proposal. Further comments on this matter were supplied by the Council's coastal engineers at the appeal stage and the wording of a suggested condition relating to this matter was supplied. I adjourned the hearing following discussion of the identified main issues, other matters and suggested conditions to reflect on whether additional evidence might be required in relation to the land stability issues. However, I considered in light of conclusions on the main issues outlined below that further evidence on this matter would not be required, and I closed the hearing in writing on 5 June 2023. In proceeding on this basis, I acknowledge that aspects of this matter remain unresolved, but due to my conclusions on the main issues, this has not been determinative in my assessment of the appeal.

Main Issues

6. The main issues overlap to some extent, and are as follows:

firstly, in view of the duties imposed by s66(1) and s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, whether the proposed development would preserve or enhance the character or appearance of the Lyme Regis Conservation Area, and whether the proposed development would preserve the setting of Belmont, a Grade II* Listed Building; and secondly, the effects of the proposed development on protected trees and the landscape and scenic beauty of the Dorset Area of Outstanding Natural Beauty.

Reasons

Site, surroundings and proposed development

7. Situated in a steeply sloping and verdant wider area between the high status listed and other buildings on Pound Street above, and the municipal Lister and Langmoor Gardens below, the appeal site is roughly triangular in shape, largely open and well-vegetated. The appeal site is situated in the Lyme Regis Conservation Area, is within the Dorset Area of Outstanding Natural Beauty (AONB) and is covered by a Tree Preservation Order¹.
8. The appeal scheme would see the development of three residential buildings, roughly one behind the other to be used as short-term holiday lets. Of a single-storey, with the floor levels raised above the ground on piled foundations in order to address the sloping nature of the site, the three units would feature mono-pitched roofs which would slope downward from north to south. Four trees would be removed from the appeal site to facilitate the development, although five trees would be planted as part of landscaping proposals, which would also see hedgerow planting to the southern boundary of the site, the establishment of understorey planting, and the introduction of woodland ground flora and wildflower and grass areas.

¹ West Dorset District Council (Land South & South-east of Belmont House, Lyme Regis – TPO 955) Tree Preservation Order 2019

Significance of the heritage assets, and special qualities of the AONB

9. The Conservation Area comprises the distinctive character areas of Lyme Regis town and Cobb hamlet, the latter an area of dense development close to the seafront and adjacent to the Cobb, a Grade I Listed structure of piers and sea walls associated with the harbour. The appeal site is at the interstice of these two distinct areas, situated to the rear of a cluster of high-status properties, in noticeably more generous plots than the buildings at Cobb hamlet, including the Grade II* Listed Belmont. According to the Lyme Regis Conservation Area Appraisal (Review 2010) (the CAA) both Belmont and its neighbouring buildings were developed as part of the settlement's emergence as a health and holiday resort, and appear to have taken advantage of the dramatically sloping topography to their rears insofar as seaward vistas are concerned.
10. The CAA notes the land stability issues that affected the gardens and land to the rear of the properties on Pound Street, and the difficulties associated with ownership of unstable land which led to acquisition by local authorities to provide Lister and Langmoor Gardens, to the south of the appeal site. The largely undeveloped nature of this area, including the appeal site, contributes to the physical separation between Cobb hamlet and the town, and ensures that the phases of the historic development of Lyme Regis are clearly discernible. In respect of this, the CAA notes that trees in and above Lister and Langmoor Gardens assist in the role of providing a buffer between the town and Cobb hamlet, "thereby protecting the historic identity of each", that the trees contribute to the character of the gardens themselves, and that their importance is observable from the Cobb.
11. Taking these considerations together with my on-site observations, leads me to the view that the distinction between the contrasting elements of Lyme Regis contributes considerably to the character, appearance and significance of the Conservation Area not only in the aesthetic sense, but also in terms of yielding an understanding of the development of the area over time. The availability of wide vistas and views both toward and from the Cobb means that these distinct elements are widely and clearly observable. The appeal site has a clear role to play within this, both as part of the relatively undeveloped buffer between the two sub-areas, and in terms of expressing the social aspirations and favourable aspect that are important features of the high-status buildings, and particularly Belmont, to which the appeal site relates.
12. At my visit, I saw the remnant structures present at the site, and readily accept that these were the vestiges of more substantial buildings. Moreover, the appellant has supplied aerial photographs showing that tree cover was less substantial on the site in the 1950s. Nevertheless, some considerable time has passed since those aerial photographs, and the tree cover on the site has noticeably matured, to the extent where it contributes to the character and appearance of the area in the way outlined above. Similarly, whilst I have been supplied with sales particulars from the early 1960s, which refer to an outline planning permission for residential development relating to the site, the precise parameters and exact siting of that claimed permission are not before me and neither has it been conclusively established that the permission is extant. As a fallback position the claimed outline permission therefore carries very little weight.

13. The appellant prays in aid of this matter, and the presence of former buildings at the site to support their view that the buffer between the Cobb and the town is not an 'historic' one. However, whether the character of the appeal site and its surroundings has been arrived at fortuitously or not, it nonetheless makes a marked contribution to the significance, character and appearance of the Conservation Area in these terms, and in arriving at this view, I have taken into account the advice of the Planning Practice Guidance² (PPG), insofar as it states that significance can arise from conscious design or fortuitously from the way an asset has evolved.
14. Whilst being within a broader area described as 'urban' by the Dorset Landscape Character Assessment, due to the aspects of its location and appearance set out above, the appeal site nevertheless makes a localised contribution to the scenic beauty of the AONB through its contribution to the contrast and diversity of the wider landscape. In arriving at this view, I consider that the wooded, steeply sloping nature of the site and its surroundings are clearly distinct from the town and Cobb hamlet in terms of the denser development present in those latter areas. In these ways, albeit in a localised manner, the wooded area within which the appeal site sits contributes to the contrast and diversity of the AONB's distinctive landscapes, which, according to the Dorset Area of Outstanding Natural Beauty Management Plan are to be counted amongst the area's special qualities. In arriving at this view, I have taken into account the appellant's Landscape and Visual Appraisal (LVA) (at page 15), insofar as it identifies the pattern of woodland within and adjacent to the town as locally distinctive and a contributory feature to the wider character of the AONB and its special quality.
15. A great deal of Belmont's significance and special interest derives from its architectural character, including its striking use of Coade stone and its association with Eleanor Coade, who resided there. Nevertheless, its setting makes a marked contribution to its significance due to its siting in a generous plot and in a prominent location which takes the advantages of its seaward facing aspect, and the topography of the land to the rear. These elements of Belmont attest to its high status, and association with the development of Lyme Regis as a health and holiday destination and contribute to its significance in these respects.
16. The surroundings of Belmont have undoubtedly evolved over time, as demonstrated on historic maps supplied by the appellant, the earliest of which³ shows the appeal site within a separate land parcel, in the ownership of Belmont, but described as a "paddock". However, material from the Landmark Trust⁴, the current owner of Belmont, refers to the acquisition of the paddock in the 1840s by the then owner of the property, which "changed the grounds of the house considerably", and refers to the associated establishment of the kitchen garden at around that time. Reference has been made by the appellant to the sale notice in an edition of the Field Magazine from 1881 referring to the paddock of "nearly 2 acres and presenting an almost unequalled site for the erection of a second residence". Further historic mapping⁵ shows, and remnant structures at the appeal site attest to, the presence of buildings at some point on the "paddock" land.

² 'Historic Environment' Paragraph: 006 Reference ID: 18a-006-20190723 Revision date: 23 07 2019

³ The Lyme Regis Tythe Map of 1841

⁴ Supplied by the Council at the hearing

⁵ Ordnance Survey 1890 and 1905

17. The appellant's heritage statements refer to the potential nature of the structures present on the appeal site, and the apparent secondary access to them from Cobb Road as depicted on those historic map extracts, with some reference to this access included in the Field Magazine advertisement. However, the overall footprint of the buildings shown, and the quality of the built form of what remains do not in my view, point to "a second residence" as contemplated in the Field Magazine, contrasting as they do to the footprints and polite architectural detailing of the Pound Street cluster of properties, but rather to some type of functional or domestic building associated with Belmont. In arriving at this view, I note the appellant disputes that the structures on the appeal site could be the gardener's cottage referred to in a biography of a previous resident of Belmont, as that document identifies such a structure as being "by the house". However, I have been directed to no other features on the historic maps closer to Belmont that may have been the gardener's cottage. In any event, at the time of statutory listing the appeal site appears to have been more clearly associated with Belmont, and historic aerial photography supplied by the appellant appear to show its use as a garden.
18. The appellant considers relatively recent alterations to Belmont⁶, which removed considerable elements of 19th Century-era development, indicate that the property's significance derives principally from its 18th Century features, and that as the appeal site appeared to be a separate land parcel at that time it does not contribute to that significance. I note also that the Listing Description concerns itself with the 18th Century elements of the building. However, listing descriptions of such vintage⁷ are, on the whole, intended to be brief and assist with identification of the related asset, and are not therefore comprehensive statements of special interest or significance. Moreover, the Historic England guidance referred to by the appellant⁸ is clear that the settings of heritage assets which have changed may enhance significance, for instance where townscape character has been shaped by cycles of change over the long term, which for the reasons set out above is clearly the case here.
19. Taking these considerations together leads me to the view, insofar as is relevant to the appeal proposal, that the appeal site is part of the surrounding landscape that clearly bears on the experience of Belmont and contributes to the understanding of the historic relationship between that property and its siting, pointing to its high status, and contrast to Cobb hamlet. These are elements that contribute to Belmont's significance in a meaningful way. In arriving at this view, I have taken into account the Court judgement⁹ on setting referred to by the appellant.

The effects of the proposed development on the significance of heritage assets

20. I concur with the appellant that contemporary designs have been permitted¹⁰ and are present within the wider Conservation Area, including in relation to the adjacent element of Farnham House, and that the use of modern materials, techniques and features would not in itself weigh against a proposal. Nevertheless, the appeal scheme would introduce three buildings, with long seaward facing elevations with a horizontal emphasis onto a site that is largely

⁶ Pursuant to planning and listed building consent applications with Council references: 1/D/10/0015292 and 1/D/10/001530

⁷ Belmont was listed in 1953

⁸ The Setting of Heritage Assets: Heritage Environment Good Practice Advice in Planning Note 3 (Second Edition)

⁹ *R(Williams) v Powys County Council* [2017] EWCA Civ 427

¹⁰ Including under the terms of planning permission with the Council reference: WD/D/20/002994

free from development, in an immediate area where visible built development is situated mainly higher up the slope. Due to the sloping nature of the appeal site, and the layout of the proposed buildings, these long seaward facing elevations would be, in effect, stacked one behind the other. These aspects of the appeal scheme, taken together, would result in an intensity of development at variance with the more generous plotting of the cluster of high-status dwellings which address Pound Street. Although the modern elements of Farnham House have been referred to, it is located further up the slope in amongst the Pound Street group, and its seaward facing elevation is narrower than those of the proposed buildings, and for these reasons it does not provide a direct precedent for the appeal scheme. Moreover, these aspects of the proposed development would not be successfully mitigated by the design elements including the 'grounded' rooflines and heights, and the shade screens/living walls to the rear that the Design and Access Statement puts forward as features which seek to "minimise" its impact.

21. The seaward elevations of the proposed buildings would feature extensive areas of glazing, which whilst recessed, would nevertheless be eye-catching, particularly when illuminated internally. Unlike the lighting present in the adjacent public gardens which the appellant refers to in their statement, lighting from the appeal scheme would serve to draw attention to incongruous built development rather than trees and landscaping. Trees to the south of the site in Lister and Langmoor Gardens would screen the proposed development to some extent, but it would still be visible in glimpsed views from the gardens themselves, and seasonal variations would render the appeal scheme more clearly visible for considerable parts of the year. Moreover, the proposed Unit C would be close to the adjacent footpath to the south, it would have a floor level considerably above the height of that footpath, and it would present its long seaward facing elevation towards it. As a result, Unit C would be an imposing and highly visible element from the footpath, the visual implications of which would not be fully softened by the proposed hedgerow planting.
22. For these reasons, the proposed development would substantially erode the contribution the site makes to the buffer between Cobb hamlet and the town, to the detriment of the character, appearance and significance of the Conservation Area. Moreover, due to the intensity of development the proposal would introduce to the plot, it would diminish the spaciousness of the site and reduce the contribution that it makes to the significance of Belmont, in terms of the visual appreciation of the Listed Building's siting and understanding this yields of its high status and its role in the historic development of the town as a health and holiday resort.

The AONB

23. The appeal site is located in the wider belt of trees sitting above Cobb hamlet and the public Gardens, which is punctuated, here and there by the occasional building. Unlike the existing buildings within the belt, however, which are on the whole sporadically located and generously plotted, the appeal scheme would introduce three separate buildings in close proximity to one another, and further down the slope than most other buildings within the belt. The proposed development would thus diminish the contrast and diversity of the landscape as a result of both its plotting and its siting. Neither the proposed use of materials nor the limited height of the ridge lines which the LVA calls for would

sufficiently soften the impacts of these fundamental aspects of the proposed development.

24. Whilst landscaping, including improvements to the boundary to the adjacent footpath is proposed, this would not fully mitigate the appeal scheme's impacts in these terms, particularly from the footpath and adjacent parts of Lister and Langmoor Gardens where its variance from the prevailing largely undeveloped character of its immediate environs would be most marked. Moreover, the landscape enhancements that are proposed, whilst laudable, would come at the expense of the introduction of built development over a considerable proportion of the site, which would dramatically change its character. I note that the LVA ascribes a minor-moderate adverse impact grading to the views from the adjacent footpath, and from several other viewpoints a neutral to minor adverse impact, and would not disagree that the proposed development's visual implications would be, on the whole, localised in extent. Nevertheless, for the reasons given above, the proposed development would, albeit in this specific and localised way, fail to conserve the landscape and scenic beauty of the AONB.

Protected Trees

25. Whilst the appeal site is not ancient woodland, and does not contain any ancient or veteran trees, it is nevertheless covered by a TPO, reflecting the contribution to the wider amenity of the area that the trees on the site make. Four trees would be removed from the site to make way for the proposed development including a sycamore, one of the tallest trees present on the site, and identified as a category 'B' tree of moderate arboricultural and landscape qualities, in the appellant's Tree Survey and Arboricultural Impact Assessment (the Impact Assessment), with an estimated remaining life expectancy of 40+ years.
26. This tree in particular, due to its prominence and overall quality contributes to the landscape structure of the appeal site and its sylvan character, and there is nothing in the evidence to suggest that it would have to be removed at this point on account of its condition or life expectancy. Whilst additional tree planting is proposed, the new trees could take some time to reach the scale and spread of the sycamore, and the site of the existing tree would be taken up by the lowermost proposed building. Due to the intervening landscaping, the amenity effects associated with the tree's removal would be relatively localised, being most marked from the adjacent footpath and the proximate parts of Lister and Langmoor Gardens. Nevertheless, taken together with the other effects of the proposal set out above, the removal of the sycamore would diminish the contribution the site makes to the character and appearance of the Conservation Area. In arriving at this view, I am cognisant of the permissions¹¹ relating to felling and other works to trees in the surroundings of the site, including in relation to Belmont. However, none of those appear to relate to proposals to facilitate development, and moreover, each proposal, including this appeal, is to be considered on its own individual merits.

Conclusions on the Main Issues.

27. Accordingly, mindful of the duties arising from the Planning (Listed Buildings and Conservation Areas) Act 1990, I conclude on the first main issue that the

¹¹ Council references: P/TRC/2021/03217, P/TRD/2021/05358, P/TRT/2022/00214, P/TRT/2022/04903.

proposed development would preserve neither the character and appearance of Lyme Regis Conservation Area, nor the setting of Belmont House. For the reasons set out above, and in light of the duty imposed on me by s85 of the Countryside and Rights of Way Act 2000 (as amended), I conclude on the second main issue that the proposed development would fail to conserve the landscape and scenic beauty of the Dorset AONB, and that it would have an adverse effect on protected trees.

28. For these reasons, the proposed development would conflict with Policies ENV1, ENV10 and ENV12 of the West Dorset, Weymouth & Portland Local Plan (the Local Plan). Taken together, and amongst other things, these policies seek to ensure that:
- the area's exceptional landscapes and seascapes are protected and that development should be located and designed so that it does not detract from and, where reasonable, enhances local landscape character;
 - all development proposals contribute positively to the maintenance and enhancement of local identity and distinctiveness and provide for the future retention and protection of trees that contribute to an area's distinctive character; and
 - the positioning of buildings on their sites relates positively to adjoining buildings, open areas or other features that contribute to the character of the area.

Other Matters

29. The proposed development could act to support the area's tourist function by virtue of its design aesthetic and location, and in terms of the provision of the type and standard of accommodation proposed. In these terms, the appeal proposal garners support from Policy ECON6 of the Local Plan and the National Planning Policy Framework (the Framework) (at paragraph 84(c)). Furthermore, whilst I have not been supplied with detailed estimates in these regards, the proposal would nevertheless create direct employment during its construction and operational phases, and would have the potential to increase spending by tourists in the local area. Taken together these economic aspects of the proposed development would be public benefits, but due to the limited amount of units proposed would weigh in favour of the proposal only to a moderate degree.
30. The proposed development would be accessible by public transport routes and is close to amenities. Moreover, sustainable carbon-efficient construction techniques would be employed in the proposed buildings. Biodiversity enhancements are proposed and could be secured by way of a planning condition. These environmental aspects would result in public benefit that carries moderate weight in favour of the appeal scheme.
31. The design of the proposed development is by an award winning and internationally renowned architectural practice and could add diversity to the built form in the area. The appellant considers the appeal site to offer a unique opportunity to introduce such a design to the Lyme Regis area. I note also the design aspects and construction techniques proposed to address specific technical challenges relating to the appeal site, including the use of modular elements, which point to an innovative approach to these matters. However, beyond references to the nature of the architectural practice involved, the extent to which public benefit would accrue as a result of the design of the

proposal in and of itself has not been clearly articulated in submissions, beyond its contribution to the economic aspects of the appeal scheme, which I have outlined above. Consequently, I am of the view that the overall public benefit that would accrue from these purely architectural considerations would be marginal.

32. Nothing in the appellant's submissions indicates that the proposed development would result in the loss of the remnant structures on the appeal site, and conditions have been suggested by the Council relating to any works to these features. Consequently, I consider that no harm would occur to the significance of these structures as a result of the proposed development. The appellant points to supporting studies, which indicate that the appeal site is unlikely to be affected by land contamination. They also draw attention to the separation distances of the proposed buildings to other dwellings, and that no residential amenity harms would be caused to the occupants of the latter as a result of this, a matter which is not contested by the Council. However, none of these issues result in positive benefits, but rather point to an absence of harm caused by the appeal proposal in each of these instances. As a consequence, these considerations have a neutral effect on the overall planning balance.

Planning Balance and Conclusion

33. The Framework anticipates that once a finding of harm to the significance of heritage assets has been made that the magnitude of that harm should be assessed; PPG also advises¹² that within each category of harm (substantial or less than substantial) the extent of any harm may vary and should be clearly articulated. In approaching this exercise, I have taken into account the appeals¹³ referred to me by the appellant insofar as they are relevant, whilst acknowledging that the proposals subject to those decisions are radically different to the one before me in this appeal.
34. In the current case, the harm caused to the significance of the Conservation Area through the diminishment of the contribution the site makes to the distinctive characters of the town and Cobb would be marked, but nevertheless would be at the less than substantial level. The harm caused to the significance of Belmont would be of a more moderate extent, but nevertheless would also be less than substantial, albeit at the lower end of the scale. However, the Framework is clear (at paragraph 199) that great weight should be given to the conservation of such assets, irrespective of whether a finding of substantial or less than substantial harm has been reached. In these circumstances, the Framework (at paragraph 202) requires me to weigh the harm against the public benefits of the proposal.
35. For the reasons set out above, the public benefits that would flow from the appeal scheme, taken either individually or together, are not sufficient to tip the planning balance in its favour when set against the great weight attracted by the harm it would cause to the significance of the Conservation Area and Belmont. Consequently, the proposed development would not accord with the Framework insofar as it expects heritage assets to be conserved in a manner appropriate to their significance, and would also conflict with Policy ENV4 of the

¹² 'Historic environment' Paragraph: 018 Reference ID: 18a-018-20190723 Revision date: 23 07 2019

¹³ Planning Inspectorate references: APP/F5540/W/3180962 and APP/F5540/Z/17/3173208, decision date 19 July 2019

Local Plan, which amongst other things, and in a way that is consistent with the Framework in terms of designated heritage assets, requires any harm to them to be justified.

36. Moreover, none of the matters advanced in support of the proposed development are of sufficient gravity, taken individually or cumulatively, to outweigh the great weight which the Framework anticipates (at paragraph 176) is to be given to conserving and enhancing the landscape and scenic beauty of the AONB.
37. It follows that the material considerations advanced in favour of the appeal scheme do not justify a decision other than in accordance with the development plan, with which, for the reasons set out above, the proposal would clearly conflict. Accordingly, taking the above considerations together with all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Conservation Officer
Lead Project Officer

INTERESTED PARTY:

Neil Backwith

DOCUMENTS RECEIVED AT AND AFTER THE HEARING

1. Extract from Landmark Trust's website
2. 2 x bundles of documents relating to proposals affecting protected trees in the surroundings of the appeal site