
Appeal Decision

Hearing and site visit held on 6 June 2023

by P Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/B1740/W/23/3315774

Land rear of 24 High Street, Lymington SO41 9AD

- 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 Ms J Shawe against the decision of New Forest District Council.
 - The application Ref 22/10754, dated 27 June 2022, was refused by notice dated 22 August 2022.
 - The development proposed is erection of two dwellings; access alterations; parking; landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. Prior to the Hearing, the Council withdrew reason for refusal no. 2 relating to the effect on the living conditions of future occupiers in terms of noise and disturbance. I agree that measures could be incorporated into the scheme to mitigate noise from the adjacent Royal British Legion premises that would be effective in preventing any unacceptable impact on living conditions.
3. A signed and dated Unilateral Undertaking (UU) has been provided intended to provide mitigation for the adverse effects of the development referred to in reason for refusal no. 3 relating to the New Forest Special Area of Conservation, the New Forest Special Protection Area, the New Forest Ramsar site, the Solent and Southampton Water Special Protection Area, the Solent and Southampton Water Ramsar site, the Solent Maritime Special Area of Conservation and the Solent and Dorset Coast Special Protection Area. The S106 Agreement meets the tests set out in paragraph 57 of the 2021 NPPF and Regulation 122 of the CIL Regulations and attracts significant weight.
4. Accordingly the main issues in this appeal are as follows:
 - Whether the proposed development would preserve or enhance the character or appearance of the Lymington Conservation Area, with particular reference to the historic burgage plot; and
 - The effect on the setting of 24 High Street, which is a Grade II listed building.

Reasons

5. The site comprises the majority of a burgage plot behind No. 24, a retail unit with residential accommodation above. The plot is currently unused and

overgrown. At the rear, a gate leads to Ashley Lane, a pedestrian footpath linking the High Street to Captains Row which delineates the line of burgage plots behind other commercial and retail enterprises on the High Street. The development would consist of two almost identical one and a half storey dwellings with mirrored plan arrangements.

Policy background

6. The development plan includes the Local Development Framework Part 2: Sites and Development Management of 2014 (LP2) and the New Forest District Local Plan 2016-2036 Part One: Planning Strategy of 2020 (LP1). Relevant policies include DM1 of LP2 which seeks to conserve and enhance the historic environment and heritage assets in general. Certain of the burgage plots in Lymington are identified on the Policies Map including Nos. 2-24 which are the subject of policy LYM9 of LP2. This says that development will not be permitted which would significantly encroach into the rear gardens or result in the loss of burgage plot boundaries at Nos. 2 to 24 High Street amongst others: and further development will be restricted to the limited rear extension of properties fronting the High Street. The explanatory text says that burgage plots are an important historic feature of Lymington town centre, influencing the pattern of development and that it is important to the character of the town centre that new development continues to maintain this historic pattern where it remains largely intact.
7. The Lymington Conservation Area Appraisal (CAA) was issued in 2002 and is augmented by the Lymington Local Distinctiveness Supplementary Planning Document of 2011 (SPD) which provides additional guidance.

Character and appearance

8. The burgage plots behind Nos. 2-24 High Street remain largely intact and are mostly clearly discernible, though some dividing walls have disappeared over time. Plots behind neighbouring Nos. 22 and 23 have become conjoined and form the garden to the Royal British Legion Lymington Branch. Residential redevelopment on Ashley Lane also combines parts of these two plots. Nevertheless the plots behind Nos. 2-24 retain in large part their undeveloped and generally green and verdant nature, in contrast to those at Nos. 25-42 where the lines of the burgage plots have become much less distinct and are not included in the text of policy LYM9. Moreover, the garden behind No. 24 is one of the few remaining with no openings in the long parallel brick walls that define its boundaries, though some height has been lost on the east side. The varying height and quality and differing periods of construction and repair have made these walls unusually interesting. They are representative of the predominant historical pattern of narrow slices of land with equal frontages on the High Street that have been integral to the development of Lymington since the medieval period. The CAA and the subsequent SPD emphasise their heritage significance and the importance of retaining the layout of the burgage plots. The SPD also notes that breaks in the underlying pattern have generally been avoided.
9. Maximising the use of land on the burgage plots is an evolving characteristic of the centre of Lymington and many contain buildings which traditionally supported High Street businesses but which have subsequently been converted to residential or replaced for new purposes. In general, where these are subservient to the main host building and avoid compromising the burgage plot

boundaries, the character and appearance of the conservation area has been preserved. The CAA observes that it is the layout of the plots, more than the buildings, that is the strongest evidence of the town's medieval origins.

10. I consider that the proposed dwellings in themselves would not conflict with the aims of policy LYM9. They would be subservient to No. 24 in terms of height and would preserve the layout of the burgage plot, similar to recent development at No. 12 and older development behind No. 20. Their siting would leave sufficient open green space for the historic pattern of development and the tranquil nature of this part of the town centre as seen from Ashley Lane and Madeira Walk to be preserved. Whilst I have doubts that the proposed maintenance gap between the Royal British Legion garden and the new exterior wall would be an efficient use of land, that would not be a reason to refuse the scheme.
11. However the distinctive walls which define the plot would be breached in two places. Most significantly, the proposed 2 parking spaces would require a section of wall just over 7 metres to be removed¹. The relatively low height of this particular part of the wall does not mean it has any lesser significance as a burgage plot boundary. Nor does its location away from the High Street and lack of public visibility weigh a great deal: it would be clearly perceived as a noticeable break in the boundary structure protected by policy. Acknowledging that its construction may not be as old as other parts of the plot boundary, its aged stretcher bond, piers and clay tile cappings appear entirely consistent with the character of the rest of the wall on the west side of the plot. Moreover, the proposal to add a sharply curving element to the burgage plot boundary adjacent to the front door of No. 2 Madeira Mews in conjunction with a new wall separating the garden of house 2 from the car park further dilutes the ability to perceive the historic pattern of development.
12. The effect of removing this wall would be to create what would appear to be a larger car park associated with more recent development at 1, 2 and 3 Madeira Mews, more modern houses of conventional design behind No. 25 High Street. The western boundary wall of No. 24 forms the edge of plots 2-24 considered to be of heritage value by virtue of policy LYM9. Removing a significant part of the burgage plot boundary and joining together plots behind No. 24 and 25 would seriously diminish the ability to perceive and understand the historic pattern of development of this part of Lymington.
13. At the Hearing, the Council agreed that there is a wide range of shopping and public transport options in Lymington available to future residents and the appellant agrees the site is in an inherently highly sustainable location. Furthermore, it would be acceptable under the Council's guidance on parking provision for development in this location not to have on-site parking, notwithstanding adopted parking standards normally requiring 2 spaces per dwelling. Recognising the appellant's desire to include parking as part of the development, I note that only one other backland development between Nos. 2 and 24 has limited parking ('Flagstones') with a very narrow previously existing access and that 2 new houses at No. 12 have no associated parking. I conclude on this matter that the provision of 2 parking spaces carries very little weight when considered against the harm caused by removal of a significant part of the burgage plot boundary on the edge of plots 2-24.

¹ Scaled from WLAWilliamsLester site plan drawing 0010 rev H

14. The other proposed new opening in the boundary would be for pedestrians at the northern end of the site. Local objectors point out that the access would be completely obstructed by an existing wide timber gate² which opens against the wall at the same location. The gate is intended to prevent unauthorised access to Madeira Mews and the WH Smith rear service yard and is usually left open. It is in need of maintenance and difficult to shut. The appellant indicated that it could be re-hung to open in the opposite direction and I do not disagree that if the proposal was otherwise acceptable, a condition could be imposed to prevent occupation until the gate is re-hung.
15. However, the new opening would represent a further loss of part of a burgage boundary protected under LYM9. Furthermore, no details are provided of how this new opening in the burgage wall (which is conspicuously leaning over further to the north) and the revised gate and hinge post would be constructed in such a way as to ensure the wall would remain structurally sound and its heritage significance retained. Paragraph 194 of the National Planning Policy Framework (NPPF) indicates that the level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. Given the existence of the gate, the specific objections of residents and the fact that the proposed opening in a curtilage listed wall would be impractical to implement, it was beholden on the applicant to provide more details.

The setting of the listed building

16. The burgage plot and its boundary walls form part of the historic curtilage of No. 24 High Street. The High Street retail premises have been extended and altered several times to the extent that the rear 2 storey element now retains limited heritage interest. However a projecting early 19th century single storey extension at the rear³ has typical detailing of the time. Last used as a café, it is associated with a small rear garden separated from the appeal site by a brick wall and gateway. A mature lime tree in the garden is prominent seen from the High Street and is noted on the plan of Character Area 1 High Street in the SPD with other trees as part of a group. The garden and tree do much to distinguish and separate the principal asset facing the High Street from the rest of the plot. However the burgage walls are important in understanding development of the High Street and the town.
17. The proposed dwellings would be orientated along the line of the burgage plot. They would not prevent the medieval pattern and growth of the town from being understood and would not be dissimilar in principle to other nearby residential development of backland plots, such as at No. 12. The pair of houses would be far enough away from the listed building and the 19th century extension to avoid compromising its setting and appreciation of its history. Having said that, the proposed large gap to serve parking spaces would appreciably harm the ability to appreciate the relationship of the rear part of the plot with the High Street listed building and its setting would in this way be compromised.
18. To conclude on the main issues, I have taken into account the proposal to repair and refurbish the remaining walls but the permanent severance of part of the burgage plot and the creation of new openings for car parking and

² Shown on Lymington Design Associates drawing 188/8D

³ About 12m long

access would bring about a significant level of 'less than substantial level of harm'⁴ to heritage significance which would not preserve or enhance the character or appearance of the Lymington Conservation Area and would detract from the setting of the listed building. The development would conflict directly with the specific aims of policy LYM9 and the heritage protection objectives of policy DM1.

Other matters

19. I now turn to concerns regarding the ability of drivers to access the car parking spaces, specifically that intended for house 1. I accept that a tracking diagram provided by the appellant subsequent to the Hearing indicates that the space could be used. However, in order to reverse correctly and safely, a fairly precise manoeuvre would be necessary to enter the bay correctly in a forward gear and then on exiting to avoid the planting bed outside No. 2 Madeira Mews and not collide with the end of the burgage wall. Also, reversing vehicles would be moving very close (within about 1.5 metres) to the front door of No. 2 Madeira Mews and the occupiers of this property, especially children, would need to exercise great care when exiting the property in case a vehicle is reversing out of the bay. It would be hard for a driver reversing to be able to see children near the front door to No. 2 due to the new 1.8 metre high wall. The area is also a shared surface with no kerb. Moreover, as might be expected, pushchairs, children's scooters, bicycles or wheelchairs may well be left near the door but within the area described by the tracking diagram.
20. The apparent failure to take the door to No. 2, the planting bed and existing car parking spaces into account on the application drawings led to objections from local occupiers that I find are justified. It is not clear that sufficient care has been applied in planning the arrangement of the car parking spaces in order to avoid risk and ease access and exit. In discussing swept path analysis and shared surfaces, *Movement for Streets* advises that careful attention is given to the combination of sightlines, parking and pedestrian movements.
21. With regard to overlooking and privacy, the roof window of bedroom 2 of house 1 would be directly opposite a bedroom window of No. 1 Madeira Mews. At a distance of about 5 metres. This would normally be considered to be a distance well below that at which people would feel an uncomfortable and unacceptable degree of overlooking. It would not be right that in a new scheme with the opportunity to design for existing siting constraints, a conflict of this kind should arise. Objectors also point to the potential for mutual overlooking of Haydens Court and Navarino Court but for reasons of distance and/or planting and boundary treatment I do not find an unacceptable impact here.
22. I recognise the concern that the scheme would partly shade the garden of the Royal British Legion but the outdoor area of the garden is wide and the effect of this 1.5 storey scheme with a pitched roof would not be so significant as to indicate an unacceptable effect.
23. I consider that the addition of 2 residents' parking spaces to those existing would not lead to an unacceptable impact on highway safety or any unacceptable risks associated with conflicting traffic movements in the access way.

⁴ Using the wording in the NPPF

Conclusion

24. The benefits of the scheme include the provision of 2 dwellings in an area where the Council acknowledges it does not have a 5-year supply of housing land and though the contribution would be small, this attracts substantial weight. It would bring back into use a neglected and overgrown site in a highly sustainable location; and bring about repair and refurbishment of the burgage plot boundary wall. Some increase in social and economic activity can be ascribed to the scheme. I give limited weight to the repair of the walls which is a historic and continuing responsibility for the landowner. Ecological benefits and CIL payments would also attach to a more acceptable scheme.
25. Against these positive aspects, considerable importance and weight attaches to the identified heritage harm to the burgage plot boundaries and the setting of the listed building by reason of the extended car parking area and pedestrian access arrangements and the associated changes to the burgage plot boundaries, which conflict directly with policy LYM9 and long-standing heritage protection aims of the Council in that respect. I attach significantly more weight to the heritage harm than the appellant because of the demonstrable erosion of burgage boundary walls over many years and the declared determination of the Council to protect them through a specific policy. The difficulties associated with the tight swept path diagram, poorly conceived pedestrian access and privacy considerations also attract weight but the heritage harm is paramount.
26. The Council has firm plans in train to remedy the shortage of housing land but they are yet to come to fruition. To summarise, in these circumstances, NPPF paragraph 11(d) indicates that where the policies which are most important for determining the application are out-of-date, permission should be granted unless (ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole. The disadvantages significantly and demonstrably outweigh the benefits, and for the above reasons, the appeal should be dismissed.

Paul Jackson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Conor Fegan	Of Counsel
Bob Hull	Bob Hull Planning
Tina Purcell	Heritage Applications Ltd

FOR THE LOCAL PLANNING AUTHORITY:

David Norris	Development Manager
Warren Symmonds	Development Management Team Leader
Andrew Sage	Conservation Officer

INTERESTED PERSONS:

Jacqueline England	Ward Councillor
Michael Huntley	Local resident
Annette Green	Local resident
David Jepson	For J Shawe

DOCUMENTS

- 1 Consultee response from New Forest National Park Authority Archaeologist
- 2 Plans associated with development at No. 12 High Street, supplied by the Council
- 3 Plans associated with 2009 application for development on the appeal site (refused at appeal)
- 4 Associated appeal decision ref APP/B1740/A/10/2120376, provided by the appellant
- 5 Swept path turning diagram outside 2 Madeira Mews, provided by the appellant