
Appeal Decision

Site visit made on 7 December 2015

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12/01/2016

Appeal Ref: APP/F1230/W/15/3133250

Bridport Magistrate's Court, Rax Lane, Bridport, Dorset DT6 3JL

- 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 Churchill Retirement Living Ltd against the decision of West Dorset District Council.
 - The application Ref WD/D/13/000075, dated 12 January 2015, was refused by notice dated 11 August 2015.
 - The development proposed was described on the decision notice and appeal form as: *'Demolition of existing building and construction of new building to provide 26 1 and 2 bedroom sheltered retirement apartments for the elderly, communal facilities including owner's lounge, guest suite and buggy store.'*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building and construction of new building to provide 26 x 1 and 2 bedroom sheltered retirement apartments for the elderly, communal facilities including owner's lounge, guest suite and buggy store at Bridport Magistrate's Court, Rax Lane, Bridport, Dorset DT6 3JL in accordance with the terms of the application, WD/D/13/000075, dated 12 January 2015, subject to the conditions set out on the attached schedule.

Policy Context

2. The appeal is required by statute to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise
3. The relevant development plan here is the West Dorset, Weymouth and Portland Local Plan (WDWPLP) which has recently been adopted. It replaces policies in the West Dorset District Local Plan (2006) that were referred to in the Council's decision.
4. Other material considerations may include the National Planning Policy Framework (the Framework) and national Planning Practice Guidance (PPG).

Main Issues

5. The appeal site is in a sustainable location close to the centre of Bridport and was apparently identified in the Council's Strategic Housing Land Availability Assessment as suitable for the development of 25 dwellings. Whilst the Appellant's Statement has claimed that the Council lacks the 5 year housing

land supply required by paragraph 47 of the Framework, according to paragraph 49 that would only potentially affect the weight to be accorded to the development plan's housing supply policies. The Council's reasons for refusal relate not to policies for housing supply or to the principle of the site's development but to design and heritage matters. In any event the Council claims that it does (just) have a 5 year supply.

6. The main issues are therefore considered to be not the principle of housing development on the site but: the effect of the development proposed on trees and on heritage assets including listed buildings, the Bridport Conservation Area and other undesignated heritage assets; the effect on the living conditions of neighbouring occupiers in respect of privacy; the living conditions of future residents of 2 flats in the development with regard to natural light; whether adequate provision would be secured for affordable housing; and whether any benefits of the development would outweigh any identified harm.

Reasons

Conservation Area, Heritage Buildings and Trees

7. WDWPLP Policy ENV4 generally seeks to protect the significance of heritage assets and provides that any harm must be justified and weighed with the public benefits. Policy ENV10 seeks amongst other things that developments should be informed by the character of their surroundings and should contribute positively to the maintenance and enhancement of local identity and distinctiveness. Trees that contribute to an area's distinctive character should be protected. Policy ENV11 is referred to in the reasons for refusal but is not of obvious relevance to the main issues. However Policy ENV12 concerns the design and positioning of buildings and is relevant. Amongst other things it seeks that the design is in harmony with adjoining buildings and the area and that the scale, mass and positioning of the building should reflect the purpose for which the building is proposed.
8. There are statutory duties under Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 with respect to listed buildings and conservations areas. The Framework sets out policy considerations which should be applied to development that may affect these and also other undesignated heritage assets.
9. The Council's appeal statement does not clearly identify or amplify the claimed harm to heritage assets. However the officer report referred to comments by the Design and Conservation Officer who in turn referred to a pre-application response from English Heritage and these have been taken into account where relevant to the appeal proposal. There are some apparent errors in the Conservation Officer's comments. For example the walled kitchen garden was apparently to the north of the appeal site, not on the appeal site itself as stated. Also the Conservation Officer states that Mountfield is a designated heritage asset whereas the Bridport Conservation Area Appraisal (Reviewed 2010), the Appellant's heritage statement and the letter from English Heritage dated 19 December 2014 all state that it is not designated. In any event no copy of a listing has been provided.
10. The appeal site is within the **Bridport Conservation Area** which is centred on this attractive town's main streets but which is extensive and also includes sub areas outside the town centre that are of different and varied character. These

areas have been separately assessed in the Conservation Area Appraisal. The appeal site is to the north of the town centre and near the south west corner of Sub-Area 5: Coneygar Hill Area. The Appraisal describes that area as being dominated by Coneygar Hill which is topped by an area of public open space and which provides an informal and rural feel that gradually becomes more urban as the sub area blends into the historic town. In the 19th century the area generally comprised large houses in impressive grounds. Many of the houses remain but 20th century infilling in the landscaped gardens and walled kitchen gardens is said to have reduced the contrast between this sub area and the remaining historic town, as my site inspection confirmed.

11. Notable development on and around the appeal site has included the mid 20th century magistrates court on the site itself, the clearance of buildings to the south to create a large surface car park, and to the north of the appeal site a late 20th century development of large red brick executive houses at Garden Close within the former walled kitchen garden of Mountfield House. All of these developments will have degraded the sub area's previous historic character.
12. The Conservation Officer states that '*any development should respect the origins of the site, having formed the original curtilage of the grade II* listed Downe Hall along with Mountfield, Rax House and the Coach House*'.
13. The appeal site is currently occupied by the disused and derelict former magistrate's court and by public car parking. This is a low flat roofed modernist building which the appraisal criticizes as not following the tradition of expressing importance in terms of architectural form. Its low form means that it is not widely visible and the Council does not dispute that its demolition would enhance the Conservation Area. Whilst taller than the magistrate's court the appeal development would occupy a similar position and it would be constructed in an outwardly more traditional style and materials with a more residential character. The appeal building would be taller than the magistrate's court but it would be set back at a similar distance from the boundaries except that to the west where it would be closer to North Street.
14. Most of the significance of the walled kitchen garden was lost when the Garden Close executive houses were developed. However part of the **Grade II listed garden wall** survives along the northern boundary of the appeal site. The heritage significance of the wall derives largely from its unusual height and length and from its former relationship to nearby Mountfield House, all of which could still be appreciated after the development. Parts of the wall have been removed and the area within the wall is of typical suburban character that differs from the rest of the sub area. However the wall itself creates a visual buffer in views from outside the former kitchen garden such as from the appeal site. The former court building on the appeal site is set back from the wall and the intervening space is a tarmac surfaced car park. After the pre-application consultation with English Heritage the proposed building on the appeal site was set back from that wall by a similar distance. Much of the existing car park adjacent to the listed wall would be replaced by gardens for the appeal development. That would enhance the setting of the wall.
15. Whatever the original grounds of the 18th century **Grade II* listed Downe Hall** may have been, the appeal site is now outside those grounds and **registered park**. The site is screened by trees and buildings within the park.

I agree with the heritage assessment that there would be a negligible impact on the setting and significance of the Hall and Park.

16. The appeal site would have been part of the grounds of **Mountfield House** which survives as a large but unlisted Victorian House to the east. It is now occupied by the Town Council and would share an access drive with the appeal scheme. Whilst its grounds have been reduced in size, Mountfield House retains spacious and attractive grounds with open public access. Its significance as an undesignated heritage asset is appreciated mainly from within those grounds and in a long view up the approach from the town centre.
17. The proposed development would be larger in scale than the courthouse. Whilst large multi-storey buildings are more characteristic of the sub area the increased scale would rival that of Mountfield. I concur with the Appellant's heritage statement which concluded at paragraph 4.3.21 that it would result in minor-negative harm to the setting and significance of Mountfield.
18. **The Grade II listed The Grove** is a 3 storey house to the south east of the appeal site. Its significance is as a large town house of comparable scale to other large houses such as Mountfield. That significance would mainly be appreciated from Rax Lane, to which the building has its main stone neo-classical frontage. The house does not have an extensive curtilage and it is now in commercial use. Its setting is marred by its proximity to the large surface car park to its west and by the associated long gap in the street frontage on Rax Lane. That car park and intervening trees on the appeal site nevertheless provide visual isolation between The Grove and the existing and proposed buildings on the appeal site. The appeal development would be set well back from Rax Lane, reducing its perceived scale in the main views of The Grove. Nevertheless, because of its height and the siting on higher ground the appeal development would still rival the status of The Grove and I consider that it would have a minor negative effect on the setting and significance of The Grove.
19. A number of other designated and undesignated heritage buildings in Rax Lane were assessed in the heritage statement and I agree with its conclusions that there would be negligible impacts on their setting and significance.
20. Having regard to the character of the Coneygar Hill area as one of large houses in extensive grounds (albeit eroded by later development and changes of use) it is clear that, to be in character, development on the appeal site should be of a single building surrounded by open space rather than for example a suburban development of detached houses such as has occurred at Garden Close. The principle issue is thus whether the scale, massing and detailing of the appeal proposal is appropriate to this site; this needs to include consideration of the effect of the development on trees that contribute positively to the area's character and visual amenity.
21. The appeal proposal has been designed to adapt to the levels on the site. Perceptions of its scale would vary according to the direction from which it is seen. From the east, including from Mountfield and the public path up to Coneygar Hill, it would appear to be a 2 storey residential building of modest width beneath a gabled roof with a projecting single storey element. That would be respectful of the setting of Mountfield and The Grove which are 3 storey buildings that retain some residential character, albeit that they are now used for other purposes.

22. From the west on North Street a relatively short elevation would be seen on higher ground above a retaining wall and with 2 storeys and a row of dormer windows to a third floor within the sloping roof above. The building would stand closer to North Street than does the court building but would be set down by one storey from the ground level at the opposite east end of the building. Seen from North Street the appeal building would have a residential character and would face another sheltered housing scheme across North Street that is also within the Conservation Area but in a different sub area and which fronts onto the street at low level. The appeal building would stand above the road level but would thereby be in character with the adjacent nearby **Garden House** which also stands on still higher ground above the road at a similar set back and which also has dormer windows. Whilst the heritage statement assessed moderate harm to the setting of that undesignated heritage asset, I concur with that statement that there would be negligible harm to the appreciation of the significance of that asset. That significance is derived mainly from its association with the historic kitchen garden wall, which it appears to penetrate.
23. There would only be limited and typically partial public views of the appeal scheme from the north, including from Garden Close. The longest public elevation would be from the south where the building would stand on high ground beyond the surface car park and behind mature trees that are mainly deciduous. Part of this long elevation would appear as 2 storeys plus roof accommodation with dormers above whilst part would appear to be 3 storeys (including a semi basement level) also with roof accommodation above. There would also be a flank view of the smaller block that fronts on to North Street. Articulation between the 2 elements and the lower height of the North Street block would together reduce the apparent overall scale and massing. However this would still appear as one of the largest buildings in the area.
24. The building would have a slightly institutional character. However that is almost inevitable for a sheltered housing development which features units of similar size, has communal elements, and needs to have sufficient units to support shared service costs. The scale, mass and positioning of the building all reflect the purpose for which the building is proposed in accordance with a criterion of Policy ENV12 and the present character of the area is mixed with commercial, residential and car park uses and a nearby existing sheltered housing scheme.
25. Whilst obviously residential in character this southern elevation would be less domestic in scale and it would be obvious that it is not, and could never have been, a single large dwelling like Mountfield or The Grove. However it is improbable that such a house would now be developed in this location. The scale and massing of the appeal proposal would be softened by the trees although these are mature and they may not all survive in the longer term. Nevertheless the immediate setting here is a car park that is itself both large in scale and alien to the dominant character of the conservation area and the sub area. The car park serves the town centre and there is no evidence that it is likely to be removed.
26. Whilst this would be a large building that would appear relatively tall from some viewpoints I disagree with the Conservation Officer's view that it would 'tower over' any heritage assets.

27. Of the 3 **trees** that are proposed to be removed, the Council does not object to the removal of an apple tree near North Street that has already blown over. The nearby hornbeam (T12) is a good specimen but is relatively small and of no great amenity value, particularly as it is close to other larger trees. It could be replaced. The semi-mature oak tree (T1) is an odd survival of a multi-stemmed tree and emerges at an angle from an ugly stump where all the other stems have been felled and where their stumps are now rotting. Whilst its removal would be noticed it is not a good specimen and there are larger and more prominent trees nearby. There is an opportunity for new replacement planting as part of a landscaping scheme although that would be unlikely to include trees that would grow to the same size.
28. The Council has expressed concern that there might be a future threat to a very large mature horse chestnut (T6) in the site's south east corner. However that is intended to be retained and it can be protected. It is far enough from the proposed building that it is unlikely that its future removal would be justified by the current development proposal.
29. My overall **conclusions** on this issue are that:
- The demolition of the magistrate's court would enhance the character and appearance of the conservation area and the setting of heritage assets
 - There would be minor-negative (less than substantial) harm to the setting and significance of both Mountfield (an undesignated heritage asset) and The Grove (a Grade II listed building)
 - There would be negligible effects on the heritage significance of any other listed buildings or undesignated heritage buildings
 - There would be a slight loss of visual amenity due to the removal of Trees T1 and T12 which may be partially but not wholly mitigated by new planting
 - Whilst it would be larger than a single dwelling of the type first developed in the Coneygar Hill sub area, the appeal proposal would generally respect the dominant character of the sub-area as one of large buildings of residential use or character surrounded by open space. By its large scale, enhanced by its location on higher ground than the car park and North Street, the proposal would result in a change to the appearance of this part of the conservation area which some persons may perceive as harmful
30. Whilst some limited harm to some heritage assets has accordingly been identified this is less than substantial and would need to be weighed with any public benefits of the proposal in accordance with Policy ENV4.

Privacy

31. WDWPLP Policy ENV16 seeks to minimize the impact of development on the amenity and quiet enjoyment of existing and future residents. This includes avoidance of significant adverse effects through loss of privacy.
32. There would be some scope for residents of the top floor of the building to look out over neighbouring private gardens to the north and towards south facing windows of some dwellings. However the appeal building would be set well back from the boundary and on lower ground. The nearest dwellings are The

Garden House and No 5 Garden Close. In the case of the Garden House considerable screening would be provided by the highest part of the listed wall and also be evergreen yew trees. The Council does not claim that there would be a loss of privacy within that dwelling. The garden at that house already appears to be overlooked from existing Garden Close dwellings such that it is not fully private. Having regard to the above factors I do not consider that there would be significant adverse loss of privacy in the terms of ENV16.

33. The listed wall at No 5 Garden Close appears to have been reduced in height in the past. However it still provides screening for the lower part of the garden. The upper terrace near to the dwelling is set above and well away from the boundary. Any views from top floor dormer windows would be distant and highly oblique. I acknowledge that the neighbour says that visitors sometimes come to the rear door of the property seeking private advice or assistance from the church minister who resides there. However to do so they would have had to enter the front garden and gate of that property in full view of other dwellings in Garden Close and thus their approach would not be private now. Having regard to all these factors including the separation distances I do not consider that there would be a significant adverse loss of privacy for the occupiers of No 5 in the terms of ENV16.

Natural Light

34. WDWPLP Policy ENV16 provides amongst other things that developments should not have a significant adverse impact on the amenities of occupiers through inadequate daylight.
35. The conclusion of the light survey that south facing windows at the 2 semi-basement units (and no others) would provide inadequate skylight is difficult to reconcile with the sky line contours in the same document. Those suggest that skylight in these rooms would be better than in some north facing flats. On the site inspection it was noted that a dense evergreen holly might affect light to at least the eastern of the affected basement windows. That could be mitigated by some trimming. However it was also obvious that all the other trees on the south side of the building are deciduous with notably high canopies. In the prevailing sunny conditions in December almost uninterrupted low level sunlight was reaching the position of the affected windows. Whilst this would be reduced in summer it is likely that some residents would prefer to have direct sunlight in their rooms for at least half the year by occupying these south facing units rather than to occupy north facing units that have marginally better daylight (although that is unclear) but no direct sun at any time of year.
36. It is concluded that dismissal of the appeal on account on poor natural light would not be justified as there would not be a significant adverse impact in the terms of ENV16.

Affordable Housing

37. WDWPLP Policy HOUS 1 seeks 35% on-site provision for affordable housing in open market schemes but allows that shortfalls can be addressed off-site by financial contributions. Policy HOUS 2 was also referred to on the decision notice but has not been supplied in evidence and is not of obvious relevance.
38. The Appellant has completed a S106 planning obligation in the form of unilateral undertaking which provides that a contribution of £196,784 would be

made to off-site provision of affordable housing in accordance with a formula provided by the Council and in lieu of on-site provision which the Appellant considers to be impractical.

39. The obligation does satisfy the provisions of the Community Infrastructure Levy Regulations 2010 (as amended) and associated policy tests in the Framework and has been taken into account in this decision.

Benefits

40. The Appellant has cited a number of public benefits of the development. These may be weighed with the identified less than substantial harm to heritage assets in accordance with Policy ENV4. They can also be weighed in the balance to determine whether this would be a sustainable development as defined by the Framework.
41. Social benefits include that the development would provide sheltered housing for the elderly for which there is a recognised need in the area. Whilst some interested persons claim that there is a greater need for family housing or housing for young people, the development would be attractive to elderly people already living in the area and would be likely to release their existing homes for occupation by others. It adds to the overall supply of housing which the Council accepts only just exceeds the 5 year's supply requirement. The affordable housing contribution would also facilitate provision for those unable to compete in the market.
42. The development's location on a brownfield site close to town centre amenities would reduce the need to travel by car, to the benefit of the environment, whilst also providing economic support for local businesses in the medium to long term to add to the significant but shorter benefits arising from the construction of the development and the employment that would be generated by the development.
43. Against these benefits would need to be set the modest environmental harm identified above in relation to the heritage assets and trees.

Other Matters

44. Account has been taken of all other matters raised in representations. In particular, whilst some persons object that there will be a loss of public parking spaces and consider that on-site parking provision to be inadequate (10 spaces), there is no objection on those grounds from the planning or highway authorities. The location is highly accessible by means other than the car and there is a large surface car park adjacent to the site for visitors. There were a number of unoccupied spaces in that car park at the time of my visit although it may be busier at other times.
45. Neither this nor the other matters raised outweigh my conclusions on the main issues.

Conditions

46. No draft conditions have been provided by the Council but a set was included in the draft Statement of Common Ground provided by the Appellant. I agree that conditions are necessary to control when development may commence and to list the approved plans in the interests of certainty. Conditions to

control the use of materials and boundary enclosures, to require a landscaping scheme, and to control external lighting are needed to protect the character and appearance of the conservation area and for security. Provision needs to be made for access and parking in the interests of the safety and convenience of highway users. Also a condition is needed to control the minimum age of qualifying residents; not least because younger residents would be likely to demand additional parking provision through higher levels of car ownership. Because the site is of potential archaeological interest a scheme for archaeological investigation is required.

47. An additional tree protection condition is included to ensure that the measures recommended in the submitted arboricultural report are implemented to safeguard the amenity value of the trees during construction. Longer term protection would be better managed by a tree preservation order which would be a matter for the Council to arrange at their discretion.
48. Some changes have been made to the wording of the suggested conditions in the interests of clarity or to accord with the tests for conditions in national policy.

Conclusions

49. The overall conclusion is that this would be a sustainable development and that the benefits of the development outweigh the identified limited harm to the heritage assets and trees such that the development would be in overall accord with the development plan and the Framework. The appeal should therefore be allowed.

Robert Mellor

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this planning permission.
2. The permission hereby granted shall be carried out in accordance with the following approved drawings: 10063TH/PLOC, 10063TH/POI, 10063TH/P02, 10063TH/P03, 10063TH/PO4, 10063TH/P05, 10063TH/P06, 10063TH/P07, 10063TH/P08, 10063TH/P09, Barrell Plan Ref 14005-BT2.
3. No development (excluding demolition) shall commence until details of the materials to be used in the construction of external surfaces have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.
4. No development shall commence until a Written Scheme of Archaeological Investigation has been submitted to and approved in writing by the Local Planning Authority and no development other than demolition shall be commenced until the approved scheme of investigation has been carried out.
5. No development (excluding demolition) shall commence until details of the proposed means of surface water disposal and sewerage disposal have been submitted to and approved by the Local Planning Authority in writing. The development shall thereafter be completed in accordance with the approved details.
6. No part of the development shall be occupied until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority specifying species, planting sizes, spacing and numbers of trees/shrubs to be planted, including replacement planting for protected trees and until the hard landscaping works have been carried out. The soft landscaping approved shall be carried out in the first planting and seeding seasons following the first occupation or completion of the building whichever is sooner. Any trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
7. No part of the development shall be occupied until the footpaths, access, parking and turning area and mobility scooter store shown on the approved drawings have been completed and made ready for use and those facilities shall thereafter be retained and kept available for those purposes.
8. No part of the development shall be occupied until details of any external lighting have been submitted to and approved in writing by the Local Planning Authority and the development shall only be carried out only in accordance with the approved lighting scheme.
9. No part of the development shall be occupied until details of the boundary treatments have been submitted to and approved in writing by the Local Planning Authority, and until the approved boundary treatments other than hedges have been completed. Any hedges proposed as boundary treatments shall be implemented in accordance with the requirements of Condition 6.
10. With the exception of the guest suite and any resident staff, at no time shall the development hereby approved be occupied by persons under the age of 60,

unless in the case of a couple where one person is over the age of 60, the second person shall not be under the age of 55.

11. No demolition or ground clearance works shall commence and no equipment, machinery or materials shall be brought onto site until the trees which are identified for retention in the Arboricultural Report by Barrell Tree Consultancy dated 18 December 2014 have been protected by fencing in accordance with British Standard 5837 and that fencing shall be retained until all construction equipment, machinery have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made without the prior written consent of the local planning authority.

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