
Appeal Decisions

Hearing held on 17 December 2013

Site visit made on 17 December 2013

by Sukie Tamplin Dip TP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 6 February 2014

Appeal A: APP/P2114/A/13/2202293

Hamlet Court, Queens Road, Cowes, Isle of Wight, PO31 8BQ

- 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 BG Cowes Limited against the decision of Isle of Wight Council.
 - The application Ref P/01451/12 – TCP/19708/P, dated 21 September 2012, was refused by notice dated 19 April 2013.
 - The development proposed is demolition of existing building and construction of 12 no. apartments, associated parking and landscape amenity provision.
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Appeal B: APP/P2114/E/13/2204828

Hamlet Court, Queens Road, Cowes, Isle of Wight, PO31 8BQ

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
 - The appeal is made by BG Cowes Limited against the decision of Isle of Wight Council.
 - The application Ref P/01452/12 – CAC/19708/N, dated 21 September 2012, was refused by notice dated 19 April 2013.
 - The demolition proposed is demolition of existing building and construction of 12 no. apartments, associated parking and landscape amenity provision.
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Decisions

1. Appeals A and B are dismissed.

Application for costs

2. An application for costs was made by BG Cowes Limited against Isle of Wight Council. This application is the subject of a separate Decision.

Procedural matters

3. Appeal A had been the subject of an Environmental Impact Assessment (EIA) screening direction. The evidence indicated that there are significant land stability issues on and adjacent to the site. There was also a request by a third party for an EIA to assess the significance of the proposed demolition, in the light of *Save Britain's Heritage v SSCLG [2011] EWCA Civ 334*. These matters did not seem to have been considered in the screening direction and it appeared to me that the development may be EIA development under Schedule 2¹. After listening to all the evidence I adjourned the Hearing and referred the application back to the Secretary of State in accordance with the

¹ Town and Country Planning (Environmental Impact Assessment) Regulations (SI 2011/1824)

Regulations². Appeal A was screened again by the Secretary of State who directed that this development is not EIA development. Accordingly the Hearing was closed.

4. Conservation Area Consent is required for demolition but not for the proposed redevelopment, consequently, notwithstanding the description on the application form, I have considered Appeal B in respect of the demolition of Hamlet Court only.
5. Although the address of the Hamlet Court is 6 Queens Road, the primary elevation faces the Esplanade and the Solent. Consequently I refer to it in my decisions as being located along the Esplanade.

Main issues

Appeal A

6. The main issues in this appeal are the effects of the proposed redevelopment on:
 - the character and appearance of the Cowes Conservation Area (the CCA) and the Solent seascape;
 - the living conditions of the occupiers of Lantern House.

Appeal B

7. The main issues in this appeal are the effects of the proposed demolition on:
 - the significance of the designated heritage asset, the CCA;
 - the significance of the non-designated asset, Hamlet Court.

Background

8. Hamlet Court is a large villa located between the Esplanade and Queens Road, close to the headland of Cowes Castle, now occupied by the Royal Yacht Squadron (RYS). It is one of a series of villas built for the fashionable yachting aristocracy in the mid 19th Century and is reputed to have been designed or supervised by John Nash. It was constructed in about 1832 for the Vice Commodore of the RYS. The villa was later extended to the west by Lord Dorchester and was lived in by the family until 1914. At this time it appears to have incorporated the attached adjacent building Lantern House, which has since become a separate ownership.
9. In about 1950 the villa building was subdivided into flats and at this stage it appears that extensive alterations were undertaken internally and externally. Because of the alterations English Heritage declined to list the building in 2004 but noted that it has historic interest and is of local significance. The appellants purchased Hamlet Court in about 2004 initially, it appears, with the aim of retaining and extending the building.
10. This part of the Isle of Wight coast, between Gurnards Cove and Cowes, is recognised as an area of unstable land and the evidence indicates that the appeal site and other buildings in the vicinity have been adversely affected by underlying and ongoing movement and slippage.

² Regulation 12(2) Town and Country Planning (Environmental Impact Assessment) Regulations (SI 2011/1824)

Reasons

APPEAL A

Character and appearance

11. The Queens Road Character Area of the CCA is described as a “varied but elegant residential area which has its roots in the early days of yacht racing in the Solent. The focus of the villas is the view over the water along with the facility to see and be seen on the promenade”³. The land rises steadily from the Esplanade with development aligned in tiers roughly parallel to the coast, such that views northwards across the Solent are maximised. In views from the sea this layering is particularly evident.
12. In views both east and west along the promenade, Hamlet Court, which is set further back in its plot than neighbouring development, provides punctuation in the mass of development, and maintains the impression of buildings in generous grounds. This is an identified positive characteristic of the CCA.
13. The main mass of the proposed building would be on a similar footprint to Hamlet Court but it would be considerably bulkier and taller. Moreover the heavy mass of the lower ground floor and upper level patio would be forward of the main Esplanade elevation. Due to the combination of the height and width of this raised terrace and the accommodation below, the impact on the street scene would be overbearing and intrusive. Consequently the existing visual break in built development seen by pedestrians on the Esplanade would be lost.
14. From the Solent this increase in mass and bulk would be seen against the tiers of development and tree covered slopes. As was clear from the site visit, such views are dynamic in nature and the passengers and crew of the boats and ferries that frequent the water would have a changing vista as they viewed the coastal strip including the appeal site. I acknowledge that the proposed building steps down in height on either side but in my view this would not mitigate the harm resulting from the increased height and mass. The proposed apartment block would be over dominant, adversely increasing the visual effect of development and blurring the pattern formed by the tiers which in turn are dominated by the church and the RYS. As a result some views of the church would be masked and this would reduce the quality of the vista from the sea.
15. Consequently, whether viewed from the Esplanade or from the Solent, the proposed building would unacceptably increase the bulk of development on a prominent and important site. It would also have a serious and over dominant impact on the spacious quality of the CCA. Moreover, by reason of the cumulative increase in bulk, the proposed building would reduce the visual importance and impact of the focal points currently provided by the listed church and the RYS.
16. Thus on this first main issue I find that the effects of the proposals on the character and appearance of the CCA and the Solent seascape would be significantly harmful. Accordingly the development would fail to comply with the aims of Policies DM2, DM11 and DM12 of the Island Plan: *The Isle of Wight Council Core Strategy (including Minerals and Waste) and Development Management Policies DPD adopted March 2012* (IP) which collectively seek,

³ Cowes Conservation Area Revision- Queens Road Character Area 2004

amongst other matters, to complement the character of the surrounding areas, particularly in Conservation Areas, and conserve the seascape of the Island. Similarly I find conflict with guidance in Sections 7 and 12 of the National Planning Policy Framework (the Framework) which make it clear that the aims of high quality design and protecting and enhancing the built and historic environment are important components of environmental sustainability. For the reasons I have given, the proposed development would have an adverse, rather than beneficial, impact on the designated heritage asset of the CCA in which the appeal site lies. These findings weigh heavily against permission.

Living conditions

17. All parties agree that the only occupiers likely to be affected, in terms of an impact on living conditions, are those in Lantern House. I see no reason to disagree.
18. Hamlet Court is currently physically attached to Lantern House along its eastern elevation. The latter wooden building is relatively small, but a substantial conservatory to the seaward side and smaller one to the rear extend the available accommodation. Moreover, there is accommodation within the lantern feature at roof level.
19. The closest part of the proposed apartment block, the side wing, would be about 2m from, and about the same height as, Lantern House. The taller elements of the building would be about 6 and 10m distant. Windows are proposed in the west facing elevation, but the appellant has suggested that these should be blank or obscured glazed and that this could be secured by condition. I am satisfied that such a condition would adequately mitigate the potential for overlooking and thus there would not be an adverse impact in terms of loss of privacy.
20. I am also satisfied that the proposed construction of the main bulk of building would not have an adverse impact on the quality of living conditions within Lantern House. But in respect of the raised patio and retaining wall, I conclude that these would be unduly intrusive to occupiers enjoying the garden of Lantern House because of its forward projection.
21. Accordingly on this second main issue I find, on balance and for the reasons I have given, that the effect on the living conditions on the occupiers of Lantern House, would be harmful. Thus the development would be contrary to guidance in the Framework that seeks to ensure a good standard of amenity for existing and future occupants of buildings.

APPEAL B

The designated asset: The CCA

22. Paragraph 132 of the Framework says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
23. In terms of significance it is common ground that the overriding character of the CCA is a product of the marine villas associated with the importance of Cowes in the development of yacht racing in the Solent. The aristocracy built houses facing the promenade and these were orientated in order to enable their important occupiers to see and be seen. The land rises to the south and

the tiers of villas therefore benefit from views to and from the water and this reinforces the vital interaction between the Solent and the development along the seafront.

24. The appeal site is on the lowest tier of development, located in a short section of properties to the west of the RYS and its lawned garden and pavilion. This group of properties has undergone significant change and redevelopment in recent years, such that the only remaining original properties facing the Esplanade are Hamlet Court and the small Lantern House attached to its west side. To the east stands a recently constructed apartment block, Vantage Point, and to the west another large building, Grantham Court, which has replaced the original villa on that site. Other developments to the south, behind and above the appeal site, have resulted in the loss of historic villas so that English Heritage now considers the CCA to be in poor condition and deteriorating. The significance of the proposed demolition of the last remaining villa on the Esplanade has to be considered in this context.
25. The appellant says that, because there has been so much loss of the historic form and maritime character, leading to the surroundings being so changed that the demolition of one more villa is justified. But although the current context is a material consideration, this is not the test as set out in the Framework, which says that the demolition needs to be considered in the context of the significance of CCA as a whole. To put it more simply, would the demolition of the last Esplanade villa harm the CCA?
26. Hamlet Court is, by reason of its history and form a vital part of the maritime history of Cowes. It is part of the essential spirit of the CCA, which is the yachting legacy and the maritime link with the Solent. Demolition would irretrievably cut the former aristocratic links with sailing, and the relationship with the RYS which stands on the headland just to the east. In my view the underlying essence of the CCA would be irretrievably damaged thus resulting in further deterioration of the CCA, which is already considered to be at risk. Thus I find that the loss of the building would result in substantial harm to the significance of the CCA.
27. In such circumstances demolition is not justified unless it can be demonstrated that the substantial harm is outweighed by substantial public benefit, or all the criteria in paragraph 133 of the Framework apply. The claimed benefits are firstly, the replacement of 7 flats with 12 flats, secondly, a more energy efficient construction, and thirdly the economic benefits of construction works. Housing delivery is a government priority but that needs to be considered in the context of local need. In this case no overriding need for units of this type or in this location has been demonstrated.
28. As to energy efficiency, all new construction would have to meet improved efficiency and there is no evidence to demonstrate that refurbishment of the building need be any less efficient and in any event there would be the attendant loss of embodied energy resulting from demolition. I accept that economic benefit in terms of employment in construction would result from both refurbishment and new build construction. However the costs per square metre of these options are said to be higher for refurbishment and the overall cost would be greater; hence more economic benefit to the local area should follow from refurbishment of the building. Taking these together, the public

benefits arising from demolition rather than redevelopment appear to be very limited and do not outweigh substantial harm to the CCA.

29. As to the criteria in paragraph 133, it is common ground that the appeal site is in a sustainable location and the nature of the CCA does not prevent continued use of the site for residential use. The viability or use of the CCA is not at issue and grant funding is not relevant to this case. Finally, the site is already in residential use and thus this is not a tangible benefit that would result from demolition. I acknowledge that not all elements of the CCA contribute to its significance⁴. But in this case, Hamlet Court is a very important building in terms of the evolution of the yachting legacy and this is fundamental to the character of the CCA as a whole. As the last remaining building of this era on the Esplanade its contribution to the significance of the heritage asset is both positive and of great value.
30. Thus, I consider that the effect of the demolition on the CCA would be substantially harmful and this is neither outweighed by substantial public benefits or other considerations. Thus this main issue weighs heavily against consent.

The undesignated heritage asset: Hamlet Court

31. It is agreed by the parties that Hamlet Court is an undesignated heritage asset and it is in a prominent location within the CCA. The Framework says that a balanced judgement will be required having regard to the scale of loss and the significance of non-designated heritage assets⁵. In respect of loss, it is proposed to demolish the entirety of Hamlet Court and thus the scale of loss is total.
32. As to significance, the scale and nature of the existing building embodies, and is a demonstration of, the rich history of an aristocratic legacy of sailing. This is still a very important part of the character and vitality of Cowes as noted previously in this decision. The building also has associations with a notable architect, John Nash, who lived and worked in Cowes towards the end of his career and during the period which saw the fashionable expansion of the town.
33. But the appellant says that whether or not the substantial building makes a positive or important contribution to the character and appearance of the locality, retention of the building is not feasible or viable because it is moving and becoming structurally unsound. A series of stability and structural reports between 2007 and 2012 have been submitted but these all appear to rely on the baseline survey undertaken in June 2007. That report provides compelling evidence which demonstrates that, unless corrective measures are taken, the building will become untenable within a period of 30-50 years, possibly sooner⁶. The Council do not dispute the findings of the reports and thus it is common ground that the building, as surveyed in 2007 has at best a future which is medium term.
34. The appellant accepted that there has been little or no ongoing maintenance since at least 2007. I was unable to view the interior of the building but there appears to be no dispute that the roof is leaking and the interior is deteriorating such that the existing upper flats are currently uninhabitable.

⁴ Paragraph 138: National Planning Policy Framework

⁵ Paragraph 135: National Planning Policy Framework

⁶ Paragraph 10.4 Stability Report: Malcolm Woodruff Ltd June 2007

There also appears to be structural cracking and movement of the walls. In mitigation it was said that maintenance could not address the underlying and serious problems arising from land instability and would not be cost effective.

35. That is a cogent argument, but such lack of maintenance is likely to significantly shorten the remaining life of the building whatever that may be. Evidence suggests that land movement tends to be episodic and thus it is not clear how long the building will remain habitable in the absence of any remedial action. Nevertheless the lack of maintenance is likely to be seriously damaging the building and hastening its decline.
36. In terms of viability, the appellant provides 3 scenarios, the temporary (5 year) making good of the existing building, a reconstruction of the existing building accommodating 7 flats, and the appeal scheme. The Council does not challenge the findings of these studies and I have no reason to doubt that of the 3 scenarios, the appeal scheme, which would provide 12 flats, is likely to be the most profitable.
37. But it is not clear whether extensive ground works could be undertaken to stabilise Hamlet Court and extend its life beyond the 30-50 years noted in the 2007 structural report. The viability of this option does not appear to have been considered because it is not clear whether corrective action would or could extend the life of the building beyond its present anticipated term. Instead of exploring such an option the appellant appears to have discounted the possibility of underpinning or any technical solution to stabilise the existing building in the medium term. I am therefore not satisfied that the option of retaining the building beyond this short-medium term has been sufficiently explored. That is a serious omission in the circumstances where the applicant is likely to have known about land instability in this area and probably taken this into account in terms of the price paid for the site.
38. I also note that the Council is concerned that insufficient monitoring, geotechnical exploration, or foundation design appears to have been undertaken. Indeed the scale of ongoing movement does not appear to have been monitored since the original survey⁷. Thus there are a number of variables that have not been assessed and those greatly reduce the weight that I can give to the viability analysis.
39. Having considered all the evidence before me, I accept that the building has serious issues of stability, but I do not have sufficient information before me to determine whether these issues are so significant that they outweigh the great harm to the non designated heritage asset which would result from demolition. Accordingly, it has not been demonstrated that demolition is the only possible scenario, and this lack of evidence does not outweigh the total loss of the building and its significance.

Conclusions

40. Whether or not Hamlet Court has a viable future, any replacement building should preserve or enhance the CCA and relate positively to its landward and seaward context. I acknowledge that there has been significant change in the locality and large new buildings have been erected both to the east and the west of the appeal site. The scale of these buildings and the current context

⁷Emails from the Councils' Building Control Officer dated 30.11.12, 05.05.2011 and 03.06.2011

are material factors in this appeal, but these factors also need to be assessed in the wider context of the CCA.

41. For the reasons given above I have found that the increase in scale, mass and height, arising from the development subject of Appeal A particularly when seen in the context of existing larger buildings, would cumulatively result in an excess of overly dominant development along the Esplanade. On this first main issue of Appeal A, I conclude that the development would lead to a serious loss of character of the CCA and the iconic seascape of Cowes. The effect on the living conditions of the occupiers of Lantern House, the second main issue, adds to the harm that arises. Therefore Appeal A is dismissed.
42. In respect of Appeal B, Hamlet Court is of great significance to the CCA and for the reasons I have given substantial harm would arise from demolition. Whilst I acknowledge that it is in poor condition and deteriorating, the evidence shows that, with intervention and maintenance it should have a future even if only in the medium term. Accordingly its physical condition does not outweigh the harm. That conclusion reinforces the situation arising from my conclusion on Appeal A that no acceptable scheme for redevelopment is before me. Accordingly Conservation Area Consent for demolition should not be granted⁸ and Appeal B is also dismissed.

Sukie Tamplin

INSPECTOR

⁸ Paragraph 136 of the National Planning Policy Framework says that all reasonable steps should be taken to ensure new development will proceed after the loss of a heritage asset.

APPEARANCES

FOR THE APPELLANT:

Ken Dijksman MRTPI	Dijksman Planning LLP
James Weeks	Director, the Built Heritage Consultancy Ltd
Peter O'Rourke	McBains Cooper
Brian Clarke	McBains Cooper
Paul Cowton	McBains Cooper
Michael Cotterhill	Cotterhill Hickman LLP

FOR THE LOCAL PLANNING AUTHORITY:

Liz Dorling	Principal Planning Officer Isle of Wight Council
Mike Gildersleeves MSc BA(Hons), PG Cert	Senior Planning Officer Isle of Wight Council

INTERESTED PERSONS:

Cllr Richard Hollis	Isle of Wight Council
Terence Cantello	Local Resident
Dawn Hampton	Local Resident
Robin Richardson	Local Resident

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