



Appeal Decisions

Hearing held on 28 April 2009

Site visit made on 28 April 2009

by David Murray BA (Hons) DMS MRTPI

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

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**Decision date:
20 May 2009**

Appeal Ref: APP/B1740/A/09/2096226 – Appeal A Buckland House, 91 Southampton Road, Lymington, SO41 9GH.

- 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 Colten Developments Ltd., against the decision of New Forest District Council.
- The application Ref. 08/93025, dated 28 August 2008, was refused by notice dated 12 December 2008.
- The development proposed is the demolition of the existing building and construction of a three storey building comprising 12 flats (for first time buyers); including cycle and bin storage, on-site parking and access from Eastern Street.

Appeal Ref: APP/B1740/E/09/2096281 – Appeal B Buckland House, 91 Southampton Road, Lymington, SO41 9GH.

- 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 Colten Developments Ltd., against the decision of New Forest District Council.
- The application Ref 08/93024, dated 28 August 2008, was refused by notice dated 12 December 2008.
- The demolition proposed is that of the existing building.

Procedural matters

1. I have amended the description of development from that set out in the application forms and used the one formed by the Council to clarify the nature of the proposal.
 2. At the Hearing, the appellants tabled revised plans which made some alterations to the scheme originally submitted to the Council. These revisions followed further discussions with the Council and comprised changes to the fenestration and projecting canopies on the Southampton Road elevation of the building; and the increase in eaves height of the rear projection of the building by about 0.7m to improve its design. The appellant's had undertaken notification to interested parties of the proposed changes and invited any further representations to be made to the Council and to the Hearing. The Council objected to these revisions being considered at the appeal Hearing as they felt that the revisions were significant and material and not within the scope of the 'Wheatcroft' principles. Further, the Council officers expressed the view that the Council's committee and elected members, and other individuals and bodies, would be denied the democratic right of formally considering the changes through the normal planning application process. This view was
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echoed by the representatives of the Town Council and the Lymington Society attending the Hearing.

3. I have considered the request to take into consideration the amended plans, in relation to these representations expressed at the Hearing and with regard to the judgement of the High Court in the case of *Wheatcroft v SSE* [1982] JPL 32. I consider that the changes promoted in the revised scheme, including the raising of the wall of the side elevation of the rear element by 0.7m are minor and in the main cosmetic. The proposal is still as described on the original planning application forms and as clarified in my paragraph 1 above. Overall, I consider that the changes do not alter the substance of the proposal.
4. In relation to issue of the proposed change by-passing the democratic planning process administered through the Council, I am conscious that government advice indicates that Councils and appellants should continue to negotiate during the appeal process and both narrow down and clarify the issues prior to a hearing. The amended plans are a consequence of this process. Further, I understand that the appellants have notified the normal parties of the proposed revision and indicated that any additional comments should be reported to the Council for forwarding to me or made directly to me at the Hearing. According I do not consider that any party would be or has been prejudiced by my consideration of these minor changes and I therefore intend to consider them. For clarity, the drawing numbers of the original plans and the revisions tabled at the Hearing, both of which I have considered, are listed at the end of this decision letter.

Decisions

5. I dismiss both appeals.

Main issues

6. The mains issues are, having regard to the polices of the development plan and national guidance:
 - Whether the existing building contributes positively to the character and appearance of the Lymington Conservation Area, and any special justification for demolition (Appeal B)
 - Whether the massing, height and design of the proposed replacement building would preserve or enhance the character or appearance of the Conservation Area (A);
 - The effect of the development on existing mature trees and the character and appearance of the Conservation Area and the adequacy of new planting (A);
 - Whether the development makes adequate provision for open space (A);
 - Whether the development makes adequate provision for improvements to local transportation infrastructure (A);
 - The effect of the development on the living conditions of the occupiers of adjacent properties (A).

Reasons

Background

7. The site lies on the corner of Southampton Road, a main approach into a Lymington town centre, and Eastern Street, a dog-leg extension to Eastern Avenue which serves a mainly residential area. Buckland House occupies the frontage of the site and there is a hard surfaced area of parking to the rear. There are also some mature trees and younger species along the frontage of the site with Eastern street
8. The site lies within the Lymington Conservation Area (CA). In this part of Lymington, the CA includes the terraces on the western side of Southampton Road, which contains many listed buildings, and Buckland House lies on the extremity of this peninsula. The building itself appears to date from the mid 19th century and is two storeys in height with cream painted stucco elevations in a restrained neo-classical style. The principal elevations have quoins, cornice mouldings above windows with console brackets, a cornice and parapet with S-shaped mouldings to balustrade panels and a shallow pitched roof behind. The original windows (probably sliding sash) have largely been replaced with uPVC frames and the chimney stacks are missing. The building is unoccupied and the site has been fenced off to restrict intruders. Weeds and a buddleia grow out of the wall and the roof of the building. The building was last used as a social club for a political party and the site was bought by the appellants about 2007.
9. The scheme in Appeal B seeks Conservation Area Consent for the demolition of the building, while Appeal A seeks planning permission for the erection of a replacement 3 storey building comprising 12 flats together with an area of car parking and a new access to Eastern Street. The proposal utilises most but not all of the present area of parking where an existing access to the highway would be retained as a separate entity. The new development and car parking area and access requires the removal of mature trees and a scheme for their replacement within the site is outlined in the proposal.

Demolition

10. The Council acknowledges that while the existing building is not highlighted in the Lymington CA Character Appraisal as an important unlisted building, they consider it does make a positive contribution to the character and appearance of the CA which was specifically defined to include the site. As such, the general presumption in saved policy DW-E24 of the New Forest District Local Plan First Alternation (the Local Plan) together with the guidance in Planning Policy Guidance 15 - Planning and the Historic Environment (PPG 15) is that the building should be retained for its historical and architectural interest. It should therefore continue to be preserved and the Council's decision is in accordance with this stance.
11. The appellants agree that the building makes a positive contribution but argue that it is beyond economic viability to restore or repair. A structural survey and assessment of the building was submitted by the appellants at application stage. This indicated that the building is in very poor structural condition and if restored, would need: a new roof, new windows; re-rendering and replacement of parapets, lintels and cills; damp proofing; and extensive underpinning to

make proper foundations. The Design and Access Statement indicates that the projected costs for refurbishment of the building to be in the region of £534,000 while the costs of a comparable replacement two storey building would be in the region of £348,000. It was also submitted that such refurbishment costs underestimated the cost of the necessary underpinning.

12. When the application for consent for demolition was considered by the Council, planning and conservation officers were satisfied that the refurbishment of the building was not an economically viable prospect and that if an appropriate redevelopment of the site came forward, demolition of the building would be justified. I have no reason to disagree with this conclusion and the building's very poor state and dilapidation was obvious at my site visit. Accordingly, I am satisfied that in principle, the evidence in support of demolition amounts to a special justification and this satisfies the subsidiary requirements of policy DW-E26 and the guidance in PPG 15. However, both the development plan policy and national guidance stress that consent should not be granted for demolition unless and until a scheme for suitable replacement building(s) is ready and able to be implemented. I agree with the Council, that a cleared site would not be in the interests of the character and appearance of the CA.

Character and appearance of the CA

13. In assessing the effect of the proposed new building on the character and appearance of the CA I have had regard to the 'aspects of development form' as set out in 'By Design' DTLR/CABE (2000) which encourages better practice in the assessment of urban design. In terms of the overall height and massing of the proposed building, I have considered this in relation to the setting of surrounding buildings and their special setting on the edge of the CA. In general, the surrounding buildings are a mixture of 2, 2.5 and three storeys in both residential and institutional form. The relative height and massing of these buildings are shown on the plan 0635/11, as tabled by Mr Tanner at the Hearing.
14. In my judgement, the height and massing of the proposed building would not at odds with its neighbours. Although slightly taller than the parapet around the roof of the existing building, on the Southampton Road frontage the new building would be seen as an individual building which punctuates visually the space between the mass of the Police station, albeit set back from the frontage, and the scale and proportions of the 2.5 storeys terraced house to the south. I also think it is acceptable and appropriate in townscape terms, that the corner position of the building and its individual space indicate that a focal point is created by the tower feature. This is appropriate in its own right as well as complementing the scale of the building which has permission (on appeal) on the opposite corner of the Southampton Road/Avenue Road junction.
15. The Council consider that the 'sweep' of the remaining cornice around the parapet of the roof of Buckland House, which runs visually into the eaves of the end of the adjoining terrace ending in no. 89, is an important restriction on the height of any new building on the site, but in townscape and historic terms I do not agree. Given that the special setting of the CA ends at this point, I see no reason why, in townscape terms, the form of a new building of appropriate

design should not be slightly higher as a visual stop to the presence of frontage buildings.

16. In relation to the frontage of the site along Eastern Street and viewed from other directions, I am satisfied that the scale and mass of the building will not appear unduly prominent or of excessive bulk compared to the existing building and also the higher three storey form of nos. 46/48 Eastern Street. In this regard, I consider that the slightly increased height of the flank wall as shown on revised drawing 0635/02 rev. A , and the deletion of the part dormer window, is more appropriate for the townscape.
17. In relation to the more detailed matters of the design of the building and its proposed materials, the Council raised no objection to the use of rendered elevations with a natural slate roof. Although the proposed building is not designed to have quoins on the corners of the tower and other edges, I do not see this as a fundamental flaw in the design. In my view, the design is of a contemporary nature which utilises local historic and architectural features without resulting in a pastiche of the local vernacular. This is helped by the use of dressed stone elements on some of the tower rather than being over-elaborate with excessive quoins. Again I have had regard to the changes to the design as shown on the revised plan 0635/02 revA. Whilst I have regarded these changes as cosmetic, I feel that the introduction of the second projecting canopy and the eyebrow arch to the front elevation, and the changes to the fenestration with the deletion of the 'square' secondary windows, adds distinction to the scheme. Even though the access to the building would be to the side (Eastern Street elevation) I consider that it is important that the new building has the presence of a main elevation to Southampton Road.
18. Overall, I am satisfied that the proposed new building is of an acceptable mass, scale and detailed design. It would add positively to the local townscape. Further, as a convincing case has been made for the demolition of the existing building, I am satisfied that if this were to occur, the new building proposed (in the amended scheme) would complement the character and appearance of the area and positively enhance the setting of the site in the CA. On this basis, I find that the proposal is in accordance with saved policy DW-E23 of the Local Plan.

Effect on trees

19. The site contains a number of trees mainly sited in a strip of land adjacent to the car park along the Eastern Street frontage. These comprise a group of three mature Hornbeams and group of young Oak. (The hornbeams are annotated on the site survey (0635/10) and the initial site plan (0635/101B) as Lime trees). In particular, the three Hornbeams are prominent to Eastern Street, Southampton Road and the vista looking west along Avenue Road. In my view, the trees make a significant contribution to the character of this part of the CA and this location gives them legal protection.
20. The arboricultural report submitted with the application indicates that the Hornbeams are in a state of decline as a result of them being ring barked; that is where a deep saw cut has been made around the entire trunk of each tree. There is no evidence presented as to when the trees were so attacked, or by whom, however, the proposed scheme makes provision for replacement trees

to be planted. The Council agrees that the trees have a poor life expectancy and should be replaced but considers that the proposed replacement planting is inadequate. I share the Council's concerns. Even with the amended site layout, (drawing 0635/101/C) 3 new semi-mature hornbeams are proposed to be planted in a strip of land about 0.7m wide, adjacent to the parking spaces, and which is also shown to contain a plinth wall with railings and new hedge planting. In my judgement, the land available for the tree planting is wholly inadequate, even taking into account the additional planting proposed at the entrance to the site. Further, the space available would be likely to constrain the growth of the trees in the long term and not enable them to reach the same extent as the ones proposed to be felled. On this basis I consider that the proposal does not make adequate provision for the replacement of trees which contribute to the CA and this would harm the special character of the area and would not accord with policies DW-E23 (f) and DW-E8 of the Local Plan.

21. I have considered whether this harm could be overcome by the imposition of a condition requiring further amended plans or a revised and more detailed landscaping scheme. For example one showing car parking spaces with root deflectors and structured tree soil, as suggested on plan BT2 by barrel [sic] Tree Consultancy. However, in my view, the revisions necessary to the site layout to ensure adequate space for new replacement trees to grow and other landscaping are likely to be substantial, and may involve land outside the defined application site. Such further revisions are therefore beyond the reasonable scope of these appeals.

Provision of open space,

22. Policy DW-R3 of the Local Plan requires that new residential development shall make provision for open space as part of the proposal and in accordance with a stated standard. The policy indicates that where this is not feasible on site, a contribution will normally be sought for provision off site. The appellants have now signed a Unilateral Undertaking (on the 30 March 2009) which requires the developer to pay a specific sum of money to the Council, not later than 28 days following occupation of the first dwelling (in the submitted scheme); the money to be used by the Council towards the provision of open space away from the site. Given this formal undertaking, the Council is now satisfied that the proposed scheme makes proper provision for open space in accordance with the above policy and I need no longer consider this as an outstanding issue.

Transportation infrastructure

23. Although reason for refusal no.3 in the scheme forming Appeal B relates to the lack of provision towards improvements to transport infrastructure, in the light of other appeal decisions, the Council has decided not to pursue this reason. When statements for the Hearing were exchanged, the Council gave the appellants notice that this reason was withdrawn, and it is not now before me to consider.

Living conditions

24. Although not a matter of dispute between the Council and the appellants, a neighbour has raised an objection, *inter alia*, to the scale and form of the development and the effect on the living conditions of their property. I have

considered the proposal in relation to neighbouring properties and looked at aspects of overlooking and loss of privacy and whether the new building would overshadow an existing property. However, I consider that the proposed building is far enough away from other properties, and, given the presence of the existing building and its extensive fenestration, would not cause harm by causing overlooking or loss of light in excess of that generally found in a built up area. The proposal therefore generally meets Local Plan policy DW-E1.

Conclusions

25. From the written representations made and the discussions at the hearing I consider that the existing building does make a positive contribution to the character of the Lymington Conservation Area, but the building is in a dilapidated state and reasonable repair and restoration is not economically viable. The building could therefore be demolished if a suitable scheme for its replacement is presented. However, while the proposed building has some merit in terms of its scale, massing, design and materials, and would enhance the character of the Conservation Area, the scheme does not make provision for the proper replacement of existing trees on the site, which make a very positive contribution to this character, and does not allow reasonable scope for them to flourish in the long term and make an equivalent contribution as the existing ones. Whilst other aspects of the scheme are generally acceptable, the inadequacy in the proposed layout to accommodate the trees is so profound that I consider that the scheme in appeal B should fail. In consequence, it would not be appropriate to grant consent for the demolition of the building in the meantime, and so appeal A must also fail.
26. For the reasons given above I conclude that both appeals should be dismissed.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Tanner, BA Dip TP MRTPI	Planning Consultant, Tanner & Tilley, 4 Beresford Road, Bournemouth, BH6 5AA.
Mr S Sherlock	Sherlock Boswell Architecture, 11 Oxford Street, Southampton, SO14 3DJ.
Mr R Otten,	Colten Developments Ltd., 16 Western Road, Lymington, SO41 9HL

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Straw, MA MRTPI	Appeals Officer, New Forest District Council, Appletree Court, Lyndhurst, SO43 7PA.
Mr R MacCullagh	Conservation Consultant, NFDC.

INTERESTED PERSONS:

Mr I Johnston, representing the Lymington Society.	The Chantry, Hollywood Lane, Lymington, SO41 9HD.
Ms J Vernon-Jackson, representing Lymington Town Council.	Harpers Marsh, Kings Saltern Road, Lymington, SO41 3QG.
Mrs E Lewis, Ward Councillor.	45 New Street, Lymington, SO41 9BP.

DOCUMENTS

- 1 List of people attending the Hearing.
- 2 Council's notification letter for the Hearing.
- 3 Plan showing comparative building heights and massing – submitted by Mr Tanner.
- 4 Revised photomontage of front/side corner elevation submitted by Mr tanner.

PLANS

As originally submitted with the appeal and as decided by the Council.

0635/01A ;02; 04; 05; 101B; 103; 105; 110

As submitted by Mr Tanner for the Hearing

0635/01B; 02A; 101C