



Appeal Decision

Hearing Held on 19 June 2019

Site visit made on 19 June 2019

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 August 2019

Appeal Ref: APP/B1740/W/18/3212419

15 Jones Lane, Hythe, Hampshire SO45 6AW

- 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 McCarthy and Stone Retirement Lifestyles Ltd against the decision of New Forest District Council.
 - The application Ref 18/10050, dated 12 January 2018, was refused by notice dated 11 July 2018.
 - The development proposed is the demolition of police station building and erection of a building comprising 35 retirement living apartments with associated residents lounge, refuse, rechargeable buggy store, guest suite, substation, access, car parking and landscaped grounds.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

1. The effect on the character and appearance of the area, including the setting of both Hythe Conservation Area and nearby listed buildings.
2. Whether the proposal makes adequate provision for affordable housing in the area.

Reasons

The Appeal Site

3. The site is on the edge of the centre of Hythe, near the coast. The site is within a primarily residential area, although it is also adjacent to a large playing field/cricket ground and skate park. There is also a Parish Hall to the northwest of the site.
4. Currently on the site is a vacant former police station, which is mainly a two storey building with some garaging/stores and extensive hard standing areas. Around the perimeter of the site are mature trees and hedgerows. Some of these trees are protected under a Tree Preservation Order (ref: TPO/0006/18).

5. Part of the site, being towards the boundary with West Street, is within Hythe Conservation Area. This area includes a mature tree belt. The majority of the site, including the existing building, is outside of the Conservation Area. However, the site is all within the setting of the Conservation Area and has an impact on its character due to its location immediately on this designated area's boundary.
6. The site is also in close proximity to a group of listed buildings fronting Prospect Place, the closest being No 21 which is Grade II listed.

Character and Appearance

7. The proposal would consist of the demolition of the existing two storey former police station and replacing it with a three and four storey residential building with 35 flats for retired people to live in. This includes communal living areas and a large communal garden/amenity space with additional landscaping. No significant trees are proposed to be removed.
8. The proposed building would have a similar footprint to the existing former police station on site but would be significantly taller and have substantially greater volume. There are significant differences therefore between the existing and proposed building.
9. This proposed building would essentially form a single 'L' shaped block of substantial building depth. This appears to be a feature of the design to help the functionality of the building and its intended use. However, the result would be a large and deep form of building which would appear bulky as it is not significantly 'broken up', despite its substantial size. This also would not reflect the domestic scale prevalent in the area of the site, which is typically characterised by two storey pitched roof buildings.
10. The building does step down to three storeys where it fronts Jones Lane, but much of the building is four storey which adds significantly to its bulk and visual prominence. Furthermore, the proposed building uses a flat roof, which does keep the overall height down, but in an area strongly characterised by pitched roofs this aspect adds to the building's inconsistent appearance with that of its surroundings. The flat roof (particularly the three storey section) would result in an overall height that is comparable to some of the surrounding buildings, but overall it would not positively reflect the form and massing apparent generally in the area. As a result, the development would appear as an incongruous and dominating building in this vicinity.
11. Whilst it is not suggested that the proposed building should seek to replicate in detail some of the adjacent dwellings, the building should respond to the context of the site. I recognise that there is some variety in the style and design of buildings in this part of Hythe, but most are of a similar scale and two storey height. There are some taller and larger buildings in the area. This includes the building that crosses over Shamrock Way nearby (part of Hythe Marina Village), but this is part of a larger development which is predominantly of a more typical two to three storey scale, with pitched roofs, which better reflects the characteristics of the area. The taller section includes a pitched roof and is a relatively small section of this overall development. Other examples have been raised by the appellant of taller buildings in Hythe, including within the Conservation Area. However, these are in various other settings and do not

- have differing mass and form to that proposed. As such, these other examples do not sufficiently support the case for the proposed building in this Appeal.
12. Views of the proposed building would be seen from the surrounding streets. These views would be filtered by the existing trees along the perimeter, but not to the extent that the building's mass and visual impact would be totally screened from view. There would also be views from the access, where the building would be clearly apparent. I understand there is no intention of removing any of these trees as part of the development this may still happen in the future if some die or become unstable for example. Furthermore, the building would be more prominent when trees are not in leaf, which is a substantial period of every year. As such, the building as proposed would be evident and the tree screen is not sufficient to mitigate the effects of the development on the visual amenities of the area.
 13. The proposed building is set back further into the site than the existing building from the access at Jones Lane. However, the existing building, whilst not of a particularly positive design, is two storey and has a mass and form that better integrates with this plot and has less of a prominent visual impact than that proposed. As such, the position of the proposed building within the plot does not sufficiently mitigate its visual impact compared with the existing development on site.
 14. I also recognise that this is a corner plot, where a more prominent building could be more appropriate. There can also be benefit in seeking a high density development on previously developed land. However, the proposed building does not have a design or scale which suitably reflects the site's context and would have an adverse visual impact to the area as a result, even for this corner plot.
 15. The appellant has explained how a mix of materials, balconies and recessed areas has been used in the design to enhance the building's modern appearance as proposed, with increased levels of soft landscaping to replace some of the existing hardstanding. There would also be the removal of the existing building, which is in a poor state of repair and vacant, with some environmental improvements to the site. Furthermore, some of these design aspects proposed have been demonstrated to take their cues from elsewhere in Hythe. The building, in its use of bays and modules, would also have a coherent rhythm to its elevations.
 16. Nevertheless, whilst these features of the design and landscaping would have some benefit to the overall design, they would not cumulatively provide sufficient measures or visual relief to address the excessively bulky massing of the proposed building or its visual dominance in its setting.
 17. Considering all the above, the proposed building would be an unsympathetic addition to the area, at odds with the character and scale of the surrounding built environment.

Heritage Assets

18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) is relevant to this appeal as it requires special regard as to whether to grant planning permission for development which affects a listed building or its setting. Also, Section 72(1) of the Act requires special attention

to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas in the exercise of planning functions.

19. As previously mentioned, the site is on the edge of a Conservation Area and close to the listed buildings at Prospect Place, facing Prospect Place Park opposite, particularly No 21 which is closest the site. The development would be within the settings of these heritage assets. The site may not be mentioned as a key feature of the Conservation Area in the Council's Conservation Area Appraisal, but nonetheless the site is on the edge of this designated heritage asset and so is part of its setting.
20. Whilst there is no statutory protection for the setting of conservation areas, paragraph 194 of the National Planning Policy Framework (the Framework) requires that consideration be given to any harm to or loss of significance of a designated heritage asset.
21. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 193 of the Framework states 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.
22. The Hythe Conservation Area Appraisal (HCAA) explains the significance of the Conservation Area. The Conservation Area's significance derives from the historic development of Hythe and the historic character of many of its older buildings. It indicates that the principal characteristic of the Conservation Area is its intimate village feel despite the increased size of the settlement. The buildings in Hythe vary in terms of date, form, scale, appearance, uses and materials, but the buildings within the Conservation Area are predominantly small, both in size and scale, being generally two-storey.
23. The setting of the Conservation Area is a contributor to its overall significance. This includes the later suburban areas of the settlement around the historic core. Many buildings within the setting directly influence the appreciation of the Conservation Area.
24. Currently, the site is particularly verdant, with some views through to the playing fields beyond, especially when the trees are not in leaf. The existing building has a large footprint (similar to that proposed) but does not have a substantial visual impact due to its more limited height and massing. The site currently contributes positively to the Conservation Area and its appreciation. The character balance of the site would go from that which appears currently spacious, allowing some views through with the former police station being a relatively inobtrusive building, to a site which would feature a substantially more prominent building that would dominate the plot and its surroundings. The introduction of the large and bulky building to this site would therefore be an adverse change to the character of the site and the Conservation Area.
25. The listed buildings along Prospect Place are Grade II and listed for their special architectural and historic interest. No 21 is the closest to the site, with its listing indicating some of the traditional design features and notes it as early 19th Century. Again, due to the close proximity and views between the site and this listed building I would regard the development as proposed to be within the setting. The site would be visible and experienced from much of Prospect Place to the front of these listed buildings and so I would regard the proposed

development to affect the setting of these other heritage assets also, not just No 21, even if views between site and these listed buildings are limited.

26. Therefore, although not all the site would be seen from the listed buildings along Prospect Place, it does form part of the setting. The site as existing contributes positively to its setting due to its verdant and spacious character. The change in character of the site with the proposed development, which would result in an overly dominant building would negatively affect the setting of the listed buildings.
27. The proposed development would therefore be harmful to the setting of both the Conservation Area and the listed building and would detract from the significance of these heritage assets. Nevertheless, the harm would be less than substantial and in accordance with paragraph 196 of the Framework that harm should be weighed against any public benefits of the proposal.
28. There would be some public benefit in providing additional housing for retired and elderly people where there is a need, which could in some way support the vitality and economy of Hythe, together with the economic benefits of the construction phase. The proposal would also redevelop a brownfield site and improve or add to the landscaping and pedestrian routes. There may also be the contribution to the New Homes Bonus to the Council. However, these matters would not outweigh the identified harm to these assets, to which I must attach considerable importance and weight.

Conclusion on first main issue

29. Overall, whilst there has been no objection to a residential use of this site, the proposal would be harmful to the character and appearance of the area, together with the Conservation Area and setting of the Listed Buildings. As such, the proposal is contrary to policies CS2 and CS3 of the Core Strategy for the New Forest District outside the National Park (2009), and policy DM1 of the Local Plan Part 2 (Sites and Development Management DPD) 2014. These policies seek to, amongst other things, require development to be well designed, respecting its context and contributing to local distinctiveness, whilst also protecting and enhancing the historic environment.

Affordable Housing

30. The proposal is for 35 flats, but none of which are to be affordable units. The Council's has identified a need for affordable housing in the district and it is stated to be a key priority of the New Forest District Core Strategy. Policy CS15 of the Core Strategy states that private developments would be required to contribute towards the provision of affordable housing.
31. Both Council and appellant in the Hearing have agreed as to the need for affordable housing and this can be achieved with an off-site contribution rather than being on site, for reasons such as the type of housing development and for to ensure viability for the development. The total contribution has been determined taking into consideration the viability of the development, in consultation with the District Valuer.
32. Based on the evidence before me, the need for the contribution sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010.

33. Prior to the Hearing, a draft Unilateral Undertaking (UU) was submitted, but it included a clause to omit the majority of the contribution payment if the Government abolished or restricted ground rent charges, which would have affected the viability of the development. However, during the course of the Hearing a replacement UU was submitted, which was signed and completed, and removed this clause. The amended UU required the developer to pay the full affordable housing contribution prior to occupation of the first dwelling. The amended UU also included the contribution towards habitat mitigation.
34. This amended UU addressed the Council's concerns about the inclusion of clauses that related to ground rent and the 'trigger' as to when the contribution would be paid in full. The Council at the Hearing confirmed that they found the amended UU acceptable and this addressed the second reason for refusal.
35. The proposal would therefore accord with policies CS15 and CS25 of the Core Strategy for the New Forest District outside the National Park (2009). These policies seek to, amongst other things, require a contribution towards affordable housing from residential development, taking into account viability considerations.

Other Matters

36. The New Forest District is situated in an area where there are two European nature conservation designations within and adjoining the district. These are the New Forest Area Special Protection Area (SPA) and Solent and Southampton Water SPA, as stated by Natural England in their response to this application. There is also the New Forest SAC and Ramsar site; the Solent Maritime SAC; the Southampton and Isle of Wight Lagoons SAC; the Solent and Southampton Water Ramsar site; The River Avon SAC, SPA and Ramsar Sites; and Dorset Heathlands SAC, SPA and Ramsar Sites, all within the wider area of the site, which the Council states would be affected by the proposal. These sites have been designated for their nature conservation importance as habitats supporting certain protected species, for example.
37. Increased recreational visits associated with new housing, including that arising from the appeal dwelling, would be likely to have a significant adverse effect, either alone or in combination with other schemes, on the protected sites. Therefore, as set out in the biodiversity policies of the National Planning Policy Framework and Policy DM3 of the adopted New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management (2014), mitigation would be required to make the appeal development acceptable.
38. The Council therefore proposes a mechanism for securing a contribution towards habitat mitigation by way of a negatively worded condition. However, the appellant has included a contribution within their UU. As such, the appellant does not regard a contribution through planning condition to be a necessary mechanism.
39. It is clear that the intention of the appellant is to provide towards habitat mitigation. It is the mechanism as to how this is to be provided which has been debated. However, as I have found significant harm to the character and appearance of the area and the setting of important heritage assets then I have not considered this matter further.

40. From the information submitted the Council cannot demonstrate a sufficient housing land supply. However, paragraph 11 of the Framework states that planning permission should be granted unless specific policies in the Framework, including policies relating to designated heritage assets, indicate the development should be restricted. As I have already found that the Framework policies relating to heritage assets indicate that development should be restricted, the 'tilted balance' in favour of sustainable development is not engaged.
41. Nevertheless, the proposal would contribute towards the provision of 35 new dwellings, which is a significant amount, which would go towards meeting the need for housing for older people. This may also mean that there could be existing dwellings within Hythe that would become available by those moving into the proposed development. I also recognise the social and economic benefits of providing these dwellings within Hythe, such as providing an economic boost to the town centre and also providing suitable homes for retired persons, which could be beneficial to their health and also social wellbeing. The development would enhance the landscaping at the site and develop what is currently a vacant and previously developed site, which would include good pedestrian links and energy efficient buildings.
42. However, whilst these are all beneficial aspects of the development, the harm I have identified above would significantly and demonstrably outweigh these benefits.

Conclusion

43. For the reasons given above, in relation to the harmful effect of the development to the character and appearance of the area and its heritage assets, the appeal should be dismissed.

S. Rennie

INSPECTOR

APPEARANCES:

For the Appellant:

- Rupert Warren QC
- Gian Bendinelli Bsc (Hons), PGDip, BTP, CM, DPC, MRTPI
- Chris Knight ARB, RIBA, BA (Hons), Dip Arch – Architect
- David Beardmore – MSc, MA, DipBlg, Cons Dip, UP Dip, LD Dip, LArch, FRTPI, CMLI, IHBC

For the Council:

- Jim Bennett – Case Officer
- Warren Lever – Conservation Officer

Interested Parties (those who spoke at the Hearing):

- Donald Mitchell – Potential future occupier of development
- Councillor Alex Wade – Chairman of Hythe and Dibden Parish Council Planning Committee
- Ward Councillor Sandra Delemare
- Ward Councillor Philip Dowd

Documents Submitted at the Hearing:

- Letter from the Hythe and Dibden Parish Council Planning Committee dated 17 June 2019.
- Planning Obligation by Unilateral Undertaking under S106 of the Town and Country Planning Act 1990 relating to the land at Former Police Station, Jones Lane, Hythe, SO45 6AW