
THE OLD POLICE STATION, LYMINGTON

CLOSING SUBMISSIONS FOR THE LPA

Introduction

1. This Closing adopts but does not repeat the Opening Statement.

2. It is unnecessary to address all the details of the case or the way in which the matters have been explored in seeking to put forward or test the respective cases. However, in this case some preliminary observations may assist: -

2.1 The essence of the case for the LPA is that too much development is proposed in pursuit of a high-density scheme which maximises¹ the use of the site, which is previously developed, on the brownfield register and in a sustainable location.

¹ Although the Appellant's contends that the proposal does "optimise" use – the LPA very strongly disagree for reasons set out.

2.2 The desirable planning objectives and inherent benefits associated with the residential development of this site are not and never have been in issue.

2.3 The acceptability of the scheme proposed will be driven by your own judgment of the acceptability of the scheme in terms of whether the proposal is a sympathetic visual response of the proposal to the character and appearance of the area, properly understood including in respect of heritage context.

2.4 Further there are the amenity impact of the proposals on existing residents in the vicinity [QEA – depending on your view of the parking issue], the existing landscape resources [depending on your view of the tree issue] and the likely living conditions for future residents [ditto the outdoor amenity space issue].

2.5 The case for the LPA is that even if you conclude in the Appellant’s favour on the issues in 2.4 above – a determination against the Appellant’s under 2.3 alone – will justify refusal.

2.6 This is because it has been clearly agreed by all that the many benefits of developing this site and providing the appeal scheme would not justify a proposal which you assess would not be contextually responsive and accordingly of high quality. ² This

² As confirmed in xx both by Mr Jackson and Mr Shellum. The premise of the RX of MS [only] on this issue prompted the answer that any such breach [of only 2 policies] would need to be very significant. Plainly as accepted in his initial xx answer – in this case if the scheme is not contextually responsive – has too much mass and is not seen to be making a positive contribution to the street scene from within the conservation area or along Southampton Road [for example] – then it should be rejected – and is not justified by other policy compliance.

is so - even if the breach of development plan policy is limited to two of those policies – namely ENV 3 and DM1. As a matter of law this is very plain indeed.³

2.7 This also renders otiose much consideration of how, if at all, Mr Gilfillan’s planning balance didn’t cover all the bases,⁴ or indeed why Mr Shellum clearly and objectively failed to conduct an assessment under §203 NPPF⁵ which the evidence of Mr Paul White left for him to do.

Main issue (i) Whether the proposal would contribute appropriately to addressing the diversity of housing needs of local people.

3. It is accepted that the proposal will contribute as a form of housing which addresses elderly housing needs, and for which need has been shown within the south of the LPA

³ See *R (on the appn of Corbett) v Cornwall* [2020] CA 508 Lindblom LJ applying *R v Rochdale MBC, ex p Milne* [2000] EWHC 650 [Admin]. It is not and never has been a question of the number of relevant policies.

⁴ [Either as a matter of presentation [which JG did accept] or substance [which he did not].

In my submission the assessment in his POE was not deficient at all – he carefully examined both the benefits and the harms and the xx of his very thorough section 7.1 to 7.102 revealed only that he was a very fair witness and one who gives careful and well considered answers. For example, in xx on the “optimal” use of a site – plainly this draws in the balance of contextual factors against and cannot be ascribed great weight in favour [if the harms cannot entertain such a judgment]. He also understood the difference and overlap between site and development type specific factors.

⁵ See xx of Mr Shellum which clearly showed he had not discretely conducted the exercise. Any planning balance had been left to him as the xx of Mr White made clear. This was important because the case for the Appellant only acknowledges harm to the Old Police Station as a non-designated asset and this was an exercise that this evidence was bound to do on that basis. No conservation area harm is acknowledged and, on the Appellant,’ s case §202 is not engaged.

area as set out in the Planning Statement of Common Ground which forms the basis of the agreed position between the parties.⁶

Main issue (ii) The effect of the scale and massing of the proposal on the character and appearance of the area, with particular regard to the setting of the Lymington Conservation Area.

4. The size of the site is relatively small. It has a site area of 2189 m² and is the smallest of the site areas with the comparison exercise in APOE 13 – 6. The new access amenity and parking together are also the least provided within this exercise at 1,324 m². The range of other schemes providing 1425 to 3460 m². There is only one area which can accommodate any appreciable level of on-site parking for which unsurprisingly it is used. The left-over space around the building is slim with no obvious space for a principal amenity area. The building footprint at 865 m² is nonetheless greater than the Ringwood comparator.⁷
5. However, this only becomes critical when the mass and scale of what is proposed in context is then considered.
6. It is accepted that the test for a non-designated heritage asset is less onerous than that applicable to a designated heritage asset.

⁶ See CD 56 §8.7 to 8.10

⁷ See ID10.

7. It is also accepted that the correct approach to the exercise is considered by Nathalie Lieven QC sitting as a Deputy Judge of the Planning Court in *Bohm* when she stated that the exercise under the NPPF required the effect of the proposal on the NDHA to be taken into account within the application, entailing not merely the demolition but also the construction of the new building. As the Judge states: -

*“The NPPF does not seek to prescribe how that balance should be undertaken, or what weight should be given to any particular matter.”*⁸

8. Accordingly, in this respect I do not consider that the meaning of §203 should be read as JS was concerned that it might have to be – but should be read as he was keen to say it philosophically should be as part of the overall balance.

9. Turning to the conservation area it is agreed that the issue is the effect on the setting of the conservation area. It is agreed that the setting is not an asset in itself but both the Senior Conservation and Building Design Officer (Warren Lever)⁹ and Jonathan Smith (who is the Senior Director of the UK’s largest heritage consultancy) agree that the appeal proposal will cause harm to the significance of the Lymington Conservation Area. You are invited to agree that this will be the case.

10. The effect on setting is not to be approached in a mechanical manner which correlates with the size of a given conservation area, neither can it be assumed that only one highly

⁸ See *Bohm v SSCLG* [2017] (Admin) at §34-36.

⁹ See CD 70.

significant reason for designation such as historic development around the harbour or port means that significance should not be ascribed elsewhere.¹⁰

11. It is a matter of judgment and Mr Smith approached that matter in a manner which respected a correct yet proportionate approach to significance of the CA setting as a matter of policy and law. This is a single development proposal not a report on a conservation area.

12. The loss of the Old Police Station is regarded by the LPA Conservation Officer to lie “at the highest end of the harm scale”¹¹.

13. Mr Paul White was unconvincing when he explained how he applied “low” to his view of significance of the NDHA under table 1 of the Heritage Statement. He emphasised that the key significance arose from the historic mapping. However, this is illogical. The historic mapping only shows the presence of a building on the site. Yet the contribution he recognised is architectural and this cannot be so ascertained. The architectural interest is understood from the physical building and context. The recording of the building within an archive is not a factor in deciding whether a building should be lost.¹² The Old Police Station holds architectural and historic interest which will be totally lost, and JS has given a clear and convincing explanation why the simple well-executed Classical architecture of the Old Police Station is positive in the street scene and the loss of the building should be seen to be of medium heritage significance. In addition, Mr Paul White did struggle to explain why the clearly connected interest of the Old Police House

¹⁰ This was a point of emphasis on the part of Paul White and combined with a positive view of the scheme design led to his view of neutrality of effect.

¹¹ See CD 70 final page.

¹² See NPPF §205.

(signed as such)¹³ should be disregarded on account of change of ownership and some fencing. As JS explained it was built at the same time, probably was designed by the same architect, and had sufficient legibility in the current context to have an element of group value together with the “parent” or associated Old Police Station.

14. The contribution of the NDHA is positive within the setting of the CA and the result of the building proposed is harmful. This is not only the assessment of Mr Smith¹⁴ this is the assessment of the Conservation Officer. ¹⁵

15. The undue mass and scale of the proposal will be visually harmful in a significant way as described in the evidence of JS, the current ‘gateway’ effect with the tower of 1 Avenue will be eroded as has also been clearly shown. ¹⁶The architectural devices which seek to diminish the impact of the size of the building fail and the result is an unsuccessful proposal which will harm the character and appearance of the area and cause less than substantial harm (at a medium level) to the CA through harmful effect of the loss of the existing building and the harmful effect of the proposal on the setting

¹³ Demonstrating an ongoing recognition of the association.

¹⁴ Recall his clear and well considered assessment in his written evidence and in his examination in chief by reference to the photomontages. [APOE 13].

¹⁵ See CD 70: “The proposal has a much deeper planform than the prevailing grain and massing around it leading to overly wide built form, awkward roof arrangements and a more dominant building than the context in which it sits. This will be visible from the street and views gained into the site from around the adjacent streets. For example, the end elevations to the south and west are visible from Eastern Road and Queen Elizabeth Avenue respectively. The scale and mass of the envisaged structure would impact on the balance of built form to space in the local area. It would change the character of the site from one with a recessive and architecturally attractive building to one which dominates the plot with a building of a non-contextual architectural appearance. “

¹⁶ As JS explained the Farringford DL is consistent with his analysis notably in referring to the abrupt change of character south of Avenue Road [CD 47 at §8] and the response in the Farringford DL is influenced by the higher density development along Avenue as he explained – whereas the context of the appeal site and Queen Elizabeth Avenue is different and of much lower density.

of the CA as explained by JS. ¹⁷ Great weight should be ascribed to the harm found as a matter of policy¹⁸ and as case law indicates. ¹⁹

16. **Main issue (iii) the effect of the proposals on the protected trees on the site**

This effect on the trees is a further symptom of the harm identified under issue (ii). It is acknowledged that the protected trees will be retained. From the approach to xx one could be forgiven for thinking that it is the case for the Appellants that this is an end to the matter as the protection of the trees under the TPO and its associated processes will do the rest. Of course - this never has been the basis of the case of the LPA and the wording of rfr [4] makes this clear.

17. The first part of the reason states that the proximity of the building to the maturing trees would not allow the maturing protected trees to grow into their natural size and form. The second key point of importance at 5.1 [2] relied upon by P Brophy was that the pruning works would occur and/or be justified irrespective of the proposal. In his proof he states that the 3 yearly management would not be driven by the proximity of the building.²⁰ In xx he did not maintain that point and accepted that it was. He accepted that the 3 yearly “interventions” did give rise to increase health risks for the trees.

18. In xx he also accepted that if he were to provide a new landscape context to a development such as that proposed he would not choose to plant silver maple. This was

¹⁷ Including at POE 3.44-49.

¹⁸ See NPPF §199

¹⁹ See CD 48.

²⁰ See p 6 of 14.

because of the need for future management and pruning compared to more suitable species as he explained.

19. The implications for the trees are more serious than indicated by Mr Brophy and the LPA consider that the relationship is too tight – it really is too close as HC has explained.

20. On Mr Brophy's case the trees will not mature to their full potential but that was not a problem as they already provided significant amenity value and are protected on that basis. HC considers that the shape would be unnatural and explained that maintaining separation²¹ would not allow them to mature as they otherwise should be allowed to. Ultimately PB did agree that, as proposed to be managed, they would not mature to be fully grown in size and shape of canopy and so this part of the refusal reason is essentially to be considered on that agreed basis. This is also obviously so in relation to the Cedar [T9]. The xx of HC did tie her in a knot on the ability to identify a relevant breach of policies of the development plan. However, HC is not the policy witness. Mr Brophy does not deal with the development plan policy other than to simply assert compliance without identifying or consideration any policy at all in his POE §5.1. This is not surprising both HC and PB are tree experts.

21. Mr Gilfillan provides the relevant policy evidence for the LPA and his evidence was clear in finding that the evidence fully supports a conflict with ENV 3. This he explained in chief. ²²The relationship between the proposed building and the landscape features (the TPO trees) is not sympathetic one – if it were the trees would be able to reach full maturity unimpeded by 3-year cyclical pruning to maintain separation with the

²¹ Which would nonetheless lead to a loss of light and shadow for the flats in the relevant facing elevation as HC explained.

²² Please refer to your notes of his evidence in chief.

associated risks to the trees and without the need to stress test the capacity of the TPO to withstand applications for more aggressive pruning or worse as HC explains is likely. For the avoidance of doubt this is a breach of ENV 3 (i) in that the new development would not be creating a building which is sympathetic to the environment and its context in relation to adjoining landscape features. This would be so even if the trees were not ultimately lost or if the level of pruning was only at the level indicated by P Brophy. The increased health risks are themselves unsympathetic and the diminution of future potential amenity value of these trees as landscape features is also harmful – even if there would still be amenity value as managed.

Main issue (iv) whether or not the proposal would make adequate provision for on-site parking and turning areas for emergency service

22. It is agreed that the turning areas shown on the “Wheatcroft” plan are adequate to allow turning of ambulances provided the relevant area is unparked. The low level of parking is quantitative and qualitative. Conditions might enable one or two disabled spaces to be provided at a cost to general residents parking.

23. The parking ratio for the proposal is at the lowest end of provision promoted by this operator. The information on the Hubert Lodge application [ID1] relates to a site relied upon heavily in the A’s highways proof.²³ Plainly since that was written a further 4 spaces have been added which will have increased the parking ratio. It is reasonable to infer that it was considered appropriate to so add parking.

²³ See Lloyd §6.8-9.

24. The evidence of BC has drawn on local data and standards and he is of the view that there is a significant shortfall. He does not dispute that there is on street capacity in Queen Elizabeth Avenue but does identify that there will be amenity implications.²⁴ It is pretty rough for the residents of Queen Elizabeth Avenue to be required to accept that the fact that a level of parking does occur now to be dismissively deployed as a basis for saying that they are bound to accept a significant increase due to this one proposed new development on the corner of Southampton Road.
25. More than that it does not accord with ENV 3 which is concerned with more than just highway safety. Under ENV 3 (iv) based on the evidence of BC the new development does not integrate sufficient car spaces on site so that realistic needs are met - such that there will be prejudice to the character and quality of the street.
26. This is a further symptom of the issue under (ii).
27. **Main issue (v) the effect of the proposal on the living conditions of future occupiers, in terms of outdoor amenity space.**

Whilst the evidence on this needs to be considered no appeal decision has been presented which shows in a fair or proper way²⁵ that it is right as a matter of principle to conclude that the Appellant's know their business so that given the flats will sell no

²⁴ See POE §3.9.2

²⁵ The single paragraph extract from an otherwise unprovided and very historic decision from Norwich certainly does not do that as MS appeared to accept.

issue can be said to arise. Such a proposition flies in the face of the rationale for a highly evolved planning system.

28. It may be correct to say that the owners lounge would be a well - used internal space. I do not doubt this, but it is not the matter of complaint.

29. As result of the mass and size of the building and the use of the only decent residual area for parking, the left-over space is so obviously that. It is not a space that lends itself to outdoor amenity in the manner of any of the other precedents provided in the Appellant's material. All the photographs on APOE 13 - 03 show better spaces and the vast majority, very much better spaces. Even the City Centre site shown in the photograph at Figure 2 in the evidence of Mr Shellum shows a landscaped space between an end elevation of at most 2 storey elevations (including a gable end) with sunlit outdoor amenity space.

30. JG has provided evidence to show the poor relationship of the space between Bucklands House and the proposal in terms of proximity and shadowing²⁶ on amenity and this is so even allowing for the absence of a standard in the local plan and the need for flexibility in sustainable locations advised by the NPPF. The level of choice for a decent quality sunlit space is limited. The remainder of the left-over space faces a busy road under the shading of the protected maples or Queen Elizabeth Avenue.

²⁶ Including from the proposed building.

31. This position was identified by Mr Jackson as a “compromise”, but again it is a symptom under issue (ii). JG has shown the proposal to be in conflict with ENV 3 bullet 3 and (ii).

Conclusion

32. The proposal is not in accordance with the recently adopted local plan taken as whole. As JG explained in chief under issue (ii) the scheme proposal is not in accordance with DM1 (a) bullets 1 and 2, (b) bullets 1, 2, 3 and 5, (c) bullets 1 and 2. Further and also under issue (ii) the proposal is not in accordance with ENV 3 (i) – it is not sympathetic to the environment and context in terms of massing and scale of the built form. Under issue (iii) the proposal is in breach of ENV 3 (i) and under (iv) in breach of ENV 3 (iv). Moreover, under issue (v) there is breach of ENV 3 bullet 3 and (ii).

33. The policy breach is significant and fully justifies the view that the proposal does not accord with the development plan taken as a whole.

34. Whilst there are acknowledged to be benefits in favour of redeveloping the site for a contextually responsive and high-quality design this is not such a proposal. Several of the benefits are significant, and JG did ultimately accept that meeting the needs for the elderly should be accorded significant weight. None of the benefits justify accepting a scheme that is not a high quality contextually responsive building and ultimately the Appellant’s witnesses had the good sense to accept that in clear and unequivocal answers in xx.

35. The tilted balance is not engaged and the §202 balance lands firmly in favour of rejecting the proposal. The §203 balance similarly lands firmly in favour of rejecting the proposal.
36. Material considerations including the planning benefits as put forward – even by the Appellant - do not justify a decision other than in accordance with the development plan.
37. The outcome in the event of rejecting this scheme is not gloomy at all. The site does represent an opportunity for redevelopment as has been acknowledged. As MS stated in xx two options are either that the Appellant's rework the scheme and proceed with the acquisition of the site based on proposing an acceptable design response for the appeal site or the acquisition does not proceed and the opportunity for the redevelopment of the site can be pursued by an alternative developer.
38. You are invited to conclude that the appeal should be dismissed.

Gary A. Grant

Kings Chambers.

Manchester-Leeds-Birmingham

3rd May 2022