
Appeal Decision

Site visit made on 30 August 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 23 September 2016

Appeal Ref: APP/C1055/W/16/3150234

Oaklands, 103 Duffield Road, Derby, Derbyshire DE22 1AE

- 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 Mr James Knowles of Meadowview Homes Ltd against the decision of Derby City Council.
 - The application Ref DER/06/15/00809, dated 22 June 2015, was refused by notice dated 14 April 2016.
 - The development proposed is the change of use of Oaklands from D1 clinic to C3 dwelling house. Demolition of former coach house, construction of 9 terraced houses and associated access within the grounds.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of Oaklands from D1 clinic to C3 dwelling house. Demolition of former coach house, construction of 9 terraced houses and associated access within the grounds at Oaklands, 103 Duffield Road, Derby, Derbyshire DE22 1AE in accordance with the terms of the application, Ref DER/06/15/00809, dated 22 June 2015, subject to the conditions in the attached schedule.

Preliminary Matter

2. The appellant has submitted a copy of a signed section 106 planning obligation (S106) in respect of infrastructure provision. I return to this matter later.

Application for costs

3. An application for costs was made by Mr James Knowles of Meadowview Homes Ltd against Derby City Council. This application is the subject of a separate decision.

Main Issue

4. The main issue is the effect of the vehicular access arrangements on (i) highway safety and (ii) the living conditions of nearby residents with particular regard to disturbance.

Reasons

5. The appeal site comprises a large Victorian building and its outbuildings, a hard-surfaced carpark and open landscaped areas. The existing vehicular access to the site is off Duffield Road. The proposal would involve the change of use of the main building to a dwelling, the demolition of the outbuildings and the construction of nine dwellings and a new vehicular access from Queen Mary Court.
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6. Queen Mary Court adjoins part of the southern boundary of the appeal site. It is a no through road with two spurs serving 20 dwellings. The proposed access to serve the nine dwellings would be formed off the northern spur of Queen Mary Court. Both spurs of Queen Mary Court have a section of carriageway that is too narrow in width to allow 2 cars to pass each other. As such vehicles would need to wait whilst another vehicle travels through these sections. The northern spur currently serves 6 dwellings all of which have off-street parking provision including garages.
7. The current width of the narrow section of carriageway does not meet the minimum width for a carriageway of 4.8m for up to 50 dwellings shown within table DG1 of the Design Guide used by the Council. However, there is a note within that table that where a road is to be narrowed, to help control vehicle speeds, for example, the minimum carriageway width would be 3.7m. The existing carriageway width exceeds that dimension.
8. I noted at my site visit that there was a low level of demand for on-street parking in Queen Mary Court with three cars and one van parked in the overall length of the carriageway. Two cars were parked partly on the pavement, 1 adjacent to 27 Queen Mary Court and 1 adjacent to 6 Queen Mary Court. Even with these parked cars there was sufficient remaining space for cars to travel through the carriageway without mounting the pavement and for pedestrians to pass without going into the carriageway. I acknowledge that levels of parking in the evening when residents return from work would be higher. However, given the availability of off-street parking I do not consider that this would significantly increase the level of on-street parking.
9. Parking provision at 200% would be facilitated by the proposal for the nine dwellings. I note that the site is within walking and cycling distance of the City Centre and that there are bus services that can be utilised via bus stops on Duffield Road. Consequently, there would be various modes of transport available to future occupiers of the dwellings and it is reasonable to consider that there would be little or no overspill parking onto Queen Mary Court from the proposal.
10. I note that between 2005 and 2014 there were no recorded Personal Injury Accidents in this location. At the time of my site visit in the middle of the day Queen Mary Court was very quiet and there were relatively few vehicles using it. I acknowledge that at other times of the day it may be busier but there is no evidence before me to suggest that the road is normally heavily trafficked.
11. The northern spur of Queen Mary Court is accessed via a 90 degree bend but there is a good level of visibility around that bend. Due to the bend drivers would be likely to instinctively take a cautious approach to driving at this point of the road and as such they would be travelling at a relatively slow speed. Moreover, any vehicles parked on the highway within or adjacent to the narrow section of carriageway would be visible to traffic from the main part of Queen Mary Court as they approach the bend. This would also apply to vehicles approaching and travelling through the narrow section of carriageway.
12. There is no dispute between the two main parties that the proposed nine dwellings would be likely to generate in the region of 7 two-way movements in the peak hours. Clearly this is a very low level of traffic generation. As such it is unlikely that the proposal would significantly increase the instances of vehicles having to wait for each other to pass through the narrow section of carriageway or existing residents having to wait to exit their drives.

Consequently the proposal will not appreciably increase congestion on Queen Mary Court.

13. I acknowledge the concerns raised in relation to access for emergency vehicles. However, for the reasons set out above the traffic generated by the proposed development is unlikely to give rise to increased on-street parking or cause other risks to road users to the extent that it would be harmful to highway safety.
14. The reason for refusal states that the proposed development would also create unduly detrimental levels of disturbance for existing residents. However, there is little evidence provided by the Council as to how the potential conflict between motorists accessing the proposed development and residents using their driveways could have a harmful effect on the living conditions of those neighbouring occupiers.
15. It is possible that existing occupiers may have to wait to depart their drives if a vehicle is travelling on the narrow part of Queen Mary Court. However, as stated above the limited amount of additional traffic would be unlikely to cause any significant increase in the amount of times the occupiers would be waiting. As such the proposed vehicular access would have no materially detrimental effect on the living conditions of the neighbouring occupiers in relation to disturbance.
16. I acknowledge that a number of local residents consider that the existing access onto Duffield Road is a more suitable access for the proposed development. However, that is not part of the proposals before me and I am required to determine the appeal on its own merit and on the basis of the same drawings and details submitted to, and determined by, the Council.
17. Taking into account all of the above I conclude that the vehicular access arrangements would not have an adverse impact on highway safety or the living conditions of nearby residents with particular regard to disturbance. It follows that the proposal would conform with saved Policies T4 and GD5 of the City of Derby Local Plan Review (2006)(the LP), which, amongst other things, require development to make safe and appropriate provision for access and egress from the development and to not cause unacceptable harm to the amenity of nearby areas.
18. These policies are broadly consistent with the National Planning Policy Framework (the Framework). Paragraph 32 requires that safe and suitable access can be achieved for all people and that development should only be prevented on transport grounds where the residual cumulative impacts of development are severe. Paragraph 17 requires that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Planning Obligation

19. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
20. The signed and completed S106 requires the appellant to make financial contributions of £13,460 towards highways and transportation, £17,330

towards open space and £1,220 towards public realm improvements. The Council submitted a Community Infrastructure Levy (CIL) Compliance Statement in relation to the S106. With regard to the Council's evidence, I am not convinced that the public realm improvements are directly related to the development, or necessary to make the development acceptable. I therefore attach no weight to them in reaching my decision.

21. However, I am satisfied that the remainder of the proposed contributions are necessary, directly related and fairly and reasonably related in scale and kind to the proposed development, in accordance with CIL Regulation 122. I have therefore attached weight to them in reaching my decision but as they simply fulfil policy expectations they attract no positive weight as public benefits in support of the scheme.
22. There is also a requirement for £611.70 towards the Council's monitoring and administration costs associated with the S106. However, all of the contributions sought are required to be paid prior to commencement of any development. There is no evidence before me which would indicate that the cost of monitoring and administering the S106 would give rise to additional costs over and above the Council's existing resources. Having regard to the recent judgment of the High Court¹, I consider that this is an unjustified requirement and I have therefore not taken into account in reaching my decision.

Other Matters

23. S.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The appeal site is within the Strutts Park Conservation Area (SPCA) and the buffer zone of the Derwent Valley Mills World Heritage Site (WHS). In the language of the Framework the SPCA and the WHS are designated heritage assets. I note that the Council considered that the proposed development in relation to the demolition of the outbuildings would result in less than substantial harm to the significance of the designated heritage assets. In relation to the conversion of Oaklands back into residential use, the construction of nine dwellings and the garage for Oaklands the Council considered that the development would preserve the character of the SPCA and the setting of the WHS. Based on the evidence before me I have no reason to dispute these findings.
24. Paragraph 134 of the Framework says that less than substantial harm should be weighed against the public benefits of the proposal. In this case, those public benefits amount to the conversion and reuse of Oaklands, the economic and social benefits arising from the occupation and construction works of the dwellings and additional landscaping and reduction in the overall amount of hardstanding for car parking within the site. There is clear and convincing justification that it is not economically viable to convert the outbuildings to residential use. Furthermore, the outbuildings are ancillary to Oaklands and form only a small part of the significance of the heritage assets. Accordingly, while any harm to a designated heritage asset must be given considerable weight and importance, there is no question that the public benefits of the appeal scheme clearly outweigh the harm to the heritage assets in this case.

¹ Oxfordshire CC v Secretary of State for Communities and Local Government [2015] EWHC 186 (Admin).

As such the proposal would comply with paragraph 134 of the Framework and S72(1) of the Act.

25. Local residents object to the proposal on a wider basis, including in respect of, loss of privacy and light, loss of trees, drainage capacity, noise, light pollution and impact on wildlife. These did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.
26. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

Conditions

27. I have considered the conditions put forward by the Council and the consultees on the planning application against the requirements of the Planning Practice Guidance and the Framework. In the interests of conciseness and enforceability the wording of some of the suggested conditions has been amended.
28. I have imposed a condition specifying the relevant drawings as this provides certainty. The conditions in relation to materials, joinery, boundary treatment, landscaping, tree protection and obscure glazing are necessary in the interests of amenity and character and appearance.
29. Highways conditions including provision of access, visibility splays, parking and turning areas and the discharge of surface water are necessary to ensure pedestrian and highway safety. To reduce the risk of flooding a condition in relation to sustainable drainage is necessary. In the interest of conserving the heritage asset I have also imposed a condition to secure building recording.
30. A condition to secure a Construction Management Plan (including access during demolition and construction) is necessary to ensure there are no significant adverse impacts upon the living conditions of local residents, or upon the highway. In the interest of enhancing the bat population I have also imposed a condition to secure bat roost features.

Conclusion

31. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development (paragraph 14) bearing in mind the objective (paragraph 47) to boost significantly the supply of housing.
32. There would be social and economic benefits through the provision of ten dwellings. Ten dwellings would provide an appreciable contribution to housing supply. There would be sustainability benefits associated with the proposal. Specifically, the appeal site is within Derby where there is a range of services, facilities and employment opportunities available. The development would result in economic benefits through the economic activity associated with their construction and occupation. These social and economic benefits provide significant weight in favour of the appeal proposal.
33. I have found that the proposals comply with paragraph 134 of the Framework and S72(1) of the Act in relation to the designated heritage assets and that there would be no adverse impacts in relation to highway safety and the living conditions of the neighbouring occupiers. I have concluded that the proposed

development would accord with the Council's Development Plan policies. Therefore the proposal would comply with the presumption in favour of sustainable development.

34. I have no evidence before me that the Development Plan policies are out-of-date. However, even if they are not up-to date paragraph 14 of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted which include designated heritage assets. I have not found any harm that would significantly and demonstrably outweigh the benefits associated with the scheme when assessed against the policies in the Framework taken as a whole. Furthermore, as stated above the proposals satisfy paragraph 134 and as such the Framework does not indicate that the development should be restricted in relation to the designated heritage assets.
35. For the reasons given above, and having regard to all other matters raised I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR

Attached – Schedule of Conditions

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Oak - 002 Rev A, Oak - 004, Oak - 005 Rev C, Oak - 006, Oak - 007, Oak - 010, Oak - 011, Oak - 012, Oak - 020, 3D Visuals for the proposed dwellings, Proposed 'relationship drawing', Topographical Survey.
- 3) Notwithstanding the details of any materials that may have been submitted with the application, details of all materials to be used in the external surfaces of the new housing and garage hereby permitted, shall be submitted to and be approved in writing by the Local Planning Authority before development is commenced. The relevant works shall be carried out in accordance with the approved details.
- 4) Details of all window and door joinery, to be used in the new housing hereby permitted, to a scale of 1:10 or 1:20 and including sections and depth of reveal from the external elevation, shall be submitted to and approved in writing by the Local Planning Authority and used in the implementation of the development.
- 5) Detailed plans showing the design, location and materials to be used on all boundary walls/fences/screen walls and other means of enclosure, including retaining walls, shall be submitted to and approved in writing by the Local Planning Authority before development is commenced and the development shall be carried out in accordance with such detailed plans.
- 6) No development shall be commenced until a landscaping scheme, indicating the types and position of trees and shrubs, including native species planting and hedge planting along the boundary between the proposed Oaklands curtilage and the new housing development and surfacing treatment of the private driveway and other paved areas has been submitted to and approved in writing by the Local Planning Authority.
- 7) The landscaping scheme submitted pursuant to Condition 6 above shall be carried out within 12 months of the completion of the development or the first planting season whichever is the sooner, and any trees or plants which, within a period of five years from the date of such landscaping works, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.
- 8) During the period of construction works all trees, hedgerows and other vegetation to be retained, including any which are on adjoining land but which overhang the site, shall be protected in accordance with BS:5837:2012 ("Trees in relation to design, demolition and construction") (or in an equivalent British Standard if replaced) and in accordance with a Tree Protection and Constraints Plan which shall be submitted and approved in writing by the Local Planning Authority before development commences and the following requirements:

- i) The date of construction of such protection and of its completion shall be notified in writing to and agreed in writing by the Local Planning Authority before any other site works commence.
 - ii) The agreed protection measures shall be retained in position at all times, with no use of or interference with the land contained within the protection zone, until completion of construction works, unless otherwise agreed in writing by the Local Planning Authority.
- 9) No demolition or any alteration of any of the ancillary buildings on the site, including the former stable / coach house building shall take place until a scheme of building recording /Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority.
- 10) No demolition/development shall take place other than in accordance with the building recording/Written Scheme of Investigation approved under condition 9.
- 11) No development shall commence until a surface water drainage scheme has been submitted to and approved by the Local Planning Authority. The surface water drainage scheme shall include Sustainable Drainage features that shall be in accordance with:
 - a) CIRIA C697 and C687 for the new dwellings
 - b) the one in thirty year rainfall event retained below normal ground level, the one in 100year plus climate change rainfall event to be retained on the development. Calculations to that end are to be approved by the Local Planning Authority including that habitable rooms do not flood for the existing dwelling
 - c) The route of outflow from a rainfall event that exceeds that amount from the one in 100 year plus climate change rainfall event for the whole site shall be made known to the Local Planning Authority.
- 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - 1. hours of working
 - 2. the parking of vehicles of site operatives and visitors
 - 3. measures to control the emission of dust and dirt during construction
 - 4. noise management procedures
 - 5. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 13) The development hereby permitted shall not be occupied until the window on the end elevation of Plot 1 which faces Queen Mary Court has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

- 14) No dwelling shall be occupied in the new housing development unless or until the new entrance and driveway off Queen Mary Court has been constructed and made available for use in accordance with details to be submitted to and approved in writing by the Local Planning Authority, before development commences. The entrance and driveway as constructed shall be retained thereafter.
- 15) No dwelling shall be occupied in the new housing development unless or until the parking and turning areas are provided in accordance with the approved plan: Oak – 005 rev C. The parking shall not be used for any purpose other than parking, turning and unloading of vehicles.
- 16) No dwelling shall be occupied in the new housing development unless or until the access driveway, parking and turning areas are constructed with provision to prevent the discharge of surface water from the driveway, parking and turning areas on to the public highway. The provision to prevent the discharge of surface water to the public highway shall then be retained for the life of the development.
- 17) No dwelling shall be occupied in the new housing development, unless or until the visibility splays shown on approved plan: Oak – 005 rev C are provided. The area within the visibility splays referred to in this condition shall thereafter be kept free of all obstructions, structures or erections exceeding 0.6 metres in height.
- 18) No development shall commence until a scheme of biodiversity enhancement (namely the provision of bat roost features) shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented prior to the occupation of the dwellings and retained thereafter.