

Appeal Decisions

Site visit made on 14 March 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 28 April 2017

Appeal A: APP/P1805/W/16/3163306

Land to the rear of 37 Nash Lane, Belbroughton DY9 9SY

- 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 Gavin Warr (11:11 Property) against the decision of Bromsgrove District Council.
 - The application Ref: 16/0287, dated 30 March 2016, was refused by notice dated 15 July 2016.
 - The development proposed is the conversion of existing outbuildings to form 2 No. 1 bedroom dwellings and the construction of a new 3 bedroom dwelling incorporating an existing outbuilding.
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Appeal B: APP/P1805/Y/16/3163303

Land to the rear of 37 Nash Lane, Belbroughton DY9 9SY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Gavin Warr (11:11 Property) against the decision of Bromsgrove District Council.
 - The application Ref: 16/0288, dated 30 March 2016, was refused by notice dated 15 July 2016.
 - The works proposed are conversion of existing outbuildings to form 2 No. 1 bedroom dwellings and the construction of a new 3 bedroom dwelling incorporating an existing outbuilding.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed and listed building consent is refused for conversion of existing outbuildings to form 2 No. 1 bedroom dwellings and the construction of a new 3 bedroom dwelling incorporating an existing outbuilding.

Preliminary Matters

3. As the proposal is in a conservation area and near some listed buildings I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

4. Both parties have taken the view that the conversion of the outbuildings would not cause direct harm to one of the listed buildings despite being structures within the curtilage that have a principal and accessory relationship to the main building. As such, the outbuildings are also listed whether or not they are explicitly mentioned in the listing. Bearing this in mind, I have had special regard to their preservation and I am satisfied that their special interest would not be harmed. This is because their historic, architectural form would remain legible and no internal features of historic merit would be lost given their previous conversion to modern use.
5. The Bromsgrove District Plan 2011-2030 (DP) was adopted in January 2017 after the application was determined and the appeal submitted. However, I am satisfied that all parties have had an opportunity to respond to this change of policy context and that no interests have been prejudiced as a result. This is the basis on which these appeals have been determined.

Main Issues

6. As the appeal site is within the Green Belt the main issues are:
 - whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework 2012 (the Framework) and the DP;
 - the effect of the proposal on the character and appearance of the local area bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed buildings, Douglas Mills and Sultur and the Belbroughton's Workmen's Club, and the extent to which it would preserve or enhance the character or appearance of the Belbroughton Conservation Area; and
 - the effect of the proposal on the living conditions of nearby residents having regard to privacy and outlook.

Reasons

7. The appeal site encompasses part of a rear garden and a series of outbuildings formerly associated with a combined residential dwelling and butcher's shop that fronts onto the main route through the village of Belbroughton. It has two vehicular access points, one from the southeast via High Street and another from the northwest via a turning head of a relatively recently constructed, residential cul-de-sac. The road that serves the cul-de-sac is Nash Lane and this would provide the main vehicular access for the scheme. The proposal is for the conversion of two outbuildings to form single bedroom, residential dwellings with a third incorporated into a new, three bedroom, residential dwelling. Additionally, a prefabricated, double garage and a modern, wooden projection from one of the outbuildings would be removed. The appeal site is within the defined settlement boundary.

Whether inappropriate

8. Paragraphs 89-90 of the Framework set out those categories of development which may be regarded as not inappropriate, subject to certain conditions. Two of the exceptions relate to limited infilling, either where a proposal is within a village or where it is associated with either the partial or complete redevelopment of previously developed land. The second exception only

applies where it would not have a greater impact on the openness of the Green Belt and the purposes for including land within it when compared with the existing development.

9. The appellant is of the opinion that the appeal site is within the settlement boundary and that the majority of the site is previously developed land because of its association with the former butcher's shop. However, the Council maintain that a significant extent of the appeal site is garden land and that the siting of the new dwelling is such that it would not constitute appropriate infill development. I agree with the first point but not the second.
10. This is because I observed that the north-eastern part of the appeal site is garden land that was formerly associated with No 3 High Street. As I have no substantiated, historical evidence to the contrary, the area on which the new dwelling would be situated is specifically excluded from the definition of previously developed land, as set out in Annex 2 of the Framework. Consequently, the second exception does not apply.
11. The Council have not elaborated their second point. I observed that the appeal site is bounded by development and, in visual terms, located well within the settlement boundary. As a result, I find this point both untenable and unsubstantiated by any reasoned justification. Consequently, the first exception applies and I find the proposal would not amount to inappropriate development in the Green Belt. This would satisfy the requirements of paragraph 89 of the Framework and would be consistent with policy BDP4 of the DP which seeks, among other things, to ensure that the any new buildings in the Green Belt are not inappropriate.

Character and appearance

12. The Belbroughton Conservation Area (CA) was designated in 1969 and encompasses the irregularly-shaped, historic core of the village. It has a compact nature and views within the CA are generally limited by the layout which gives rise to a series of distinct spaces that are framed by walls, hedges and cuttings. It has a low density character with a range of smaller properties fronting the roads with larger, higher status buildings set back in their own grounds. Although a range of forms are present, its architectural character is largely derived from the red brick buildings of the 18th and 19th centuries. The High Street has a linear form with extensive terracing along its northern side which contrasts with a more porous frontage along its southern side. Given the above, I find that the significance of the CA, insofar as it relates to this appeal, to be primarily associated with the street pattern, views within the village and the space about its historic dwellings.
13. Douglas Mills and Sulur (No 3) was listed in 1986 and dates from the mid-18th century with 20th century additions. Belbroughton's Workmen's Club (No 5) was listed in 1967 and is an 18th century remodelling of a 17th century building with 20th century additions. These buildings adjoin each other and are on the southern end of series of architecturally diverse, terraced properties which are set back from the carriageway by a raised walkway. Both are constructed from brick with plain, tiled roofs and comprise two stories. A modest 20th century shop frontage with a shallow, tiled roof projects from the front elevation of No 3, towards its southern gable end. A high gateway, with simple brick piers, visually links the building to a more diminutive, residential property to the south.

14. The gap between these buildings and rising ground is such that clear views of the outbuildings can be gained over the top of the gateway. The rear of both buildings is characterised by a significant area of open space. Notwithstanding the current use of the land to the rear of No 5, evidence suggests that this has historically been open garden land since at least 1884. The space around the outbuildings associated with No 3 has also contributed to this character. Given the above, I find that the setting of the listed buildings, insofar as it relates to this appeal, to be primarily associated with the contrasting character of the front and rear elevations and the historical legibility of the outbuildings as curtilage structures of No 3.
15. I observe from the plans and my site visit that the new dwelling would lead to an incongruent backland development that would not be well related to the existing grain of development either along Nash Lane or High Street. It would appear as a disjointed dwelling with limited legibility in relation to the existing street plan. It would also erode the historically open character to the rear of the listed buildings and would be visible when viewed through the gap in the frontage of High Street, where the existing gateway is situated. These impacts would be further compounded by the enclosure and domestication of the space about Building 1 and Building 2. The high brick walling would not only sever the functional linkage between the outbuildings and No 3 but also a main entrance to the site. This would disrupt the historical layout of the outbuildings and their relationship with both No 3 as well as the wider street scene. This would have a negative impact on the open setting of the listed buildings, as well as the character of the CA.
16. The appellant is of the opinion that the rear garden and outbuildings of No 3 are not significant because they are not included in the listing and are largely excluded from public view. However, listings are primarily for identification purposes and do not provide an exhaustive or complete description of the special interest. Moreover, listed buildings and their settings are safeguarded for their inherent architectural and historic interest irrespective of whether or not public views of the building or any of their curtilage structures can be gained. This fact is not altered by the Barnwell Manor judgement¹ which primarily relates to the weight to be attached to any harm to designated heritage assets rather than the 'public ability to view and appreciate' the significance of an asset.
17. The appellant has drawn my attention to backland development elsewhere in the CA as a precedent for the proposal. I accept that the spatial arrangement of structures varies from the map that has been supplied. However, it is unclear how many structures to the rear of the street frontages are residential dwellings that benefit from permissions that are consistent with extant policies and guidance. Furthermore, no specific examples beyond Brook House and Forge House were identified. Whilst there are some similarities to the current proposal I do not have the full details before me to determine if the circumstances of those developments are the same in all respects. Furthermore, I note that the former is outside the CA boundary and that this fact is also acknowledged by the appellant.
18. Given the above, I find that the proposal would fail to preserve the setting of the listed buildings and the significance of the CA. Consequently, I give this

¹ Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137.

harm considerable importance and weight in the planning balance of these appeals.

19. Paragraph 132 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of a heritage asset or development within its setting. Given the separation distances from the listed buildings and the retention of the outbuildings, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 134 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
20. The appellant is of the opinion that the proposal would be beneficial because it would lead to the removal of an unsightly double garage, gateway and fencing thus improving the setting of No 3. Additionally, it has also been suggested that a more open design to the rear would better reveal the significance of this heritage asset when viewed from Nash Lane and that the re-use of the buildings would ensure their future viability. The appellant also claims that more affordable housing would be created and that highway safety would be improved by blocking the High Street access to the site.
21. I accept that the removal of the unsightly elements would enhance the setting of No 3 and that there would be an, albeit small, contribution to the supply of housing that would include smaller, more affordable homes. However, I find the other benefits equivocal. More specifically, I find that the open views of the appeal site that would be gained from Nash Lane would not better reveal the special interest given the loss of the primary relationship between the outbuildings and No 3 as well as the erosion of the open setting of both listed buildings. Whilst I accept that their re-use would ensure a viable future I have no marketing evidence before me to suggest that a viable use for the outbuildings cannot be secured either as curtilage structures to No 3 or as separate commercial units with an extant A1 use. I also note that the site is currently gated and there is no vehicular access between High Street and Nash Lane as a result. Consequently, the proposal would not lead to any highway safety improvements. The appellant has suggested that a commercial use of the outbuildings would lead to a 'dangerous access onto High Street'. However, this claim is unsubstantiated as I have no evidence before me concerning accidents associated with its former, long established commercial use.
22. Given the above, I do not find that the public benefits outweigh the harm that I have identified. I therefore conclude that, on balance, the proposal would fail to preserve the setting of the Grade II listed buildings and the character and appearance of the Belbroughton Conservation Area. This would fail to satisfy the requirements of the Act, paragraph 134 of the Framework and conflict with policies BDP 1, BDP 19 and BDP 20 of the DP that seek, among other things, to ensure that all proposals are sustainable, in terms of potential impact on the historic environment, enhance the character and distinctiveness of local areas and avoid detrimental impacts on the setting of heritage assets. This aspect of the proposal would not be in accordance with the development plan.

Living conditions

23. The Council has identified a twofold impact on the living conditions of nearby residents in the form of a loss of privacy and outlook. I observe from the plans and my site visit that the roof light and round window in Building 1 would face No 1 High Street. However, I am satisfied that the height of the roof light is such that future occupants would not be able to gain direct views of No 1 and that a suitable condition requiring obscure glazing would control any impact from, the more closely situated, round window. Furthermore, I am satisfied that any potential loss of privacy to No 3 High Street would be mitigated by the height of the rooflights in the south-westerly elevation of the new building and the separation distance. Whilst the first floor, front elevation windows of the new building would face the front elevation of Building 2 this would not lead to a loss of privacy given the intervening boundary wall. Having viewed the appeal site from a number of nearby properties and given the above I conclude, subject to conditions, that there would be no significant loss of privacy from any other perspective.
24. I observe from the plans and my site visit that the western elevation of the new building would be in close proximity to the rear garden boundary of No 37 Nash Lane which is situated on significantly lower ground. Bearing in mind the height of the new building and having viewed the appeal site from this property, I find that the proposal would lead to an overbearing and highly oppressive structure. It would exceed the height of the existing hedge and dominate the outlook from the ground floor lounge and rear garden of this dwelling.
25. The appellant is of the opinion that a condition could be used to reduce the first floor level of the new building and has drawn my attention to a previous appeal decision (Ref: APP/Y3615/A/12/2184747) where a similar approach was taken. However, the appeal process should not be used to evolve a scheme and it is important that the facts before me are essentially the ones considered by the Council and any other interested parties. The acceptance of these amendments would be prejudicial to interested persons who may wish to comment further or raise additional concerns. This contrasts with the circumstance of the previous appeal decision where interested parties had an opportunity to comment on revised plans. In any event, a much greater reduction and consequent alteration of the overall design would be required in this instance. This should more rightly be the subject of a new application rather than a minor material amendment.
26. Given the above, I conclude that the proposal would cause significant harm to the living conditions of nearby residents having regard to outlook. This would be contrary to policy BDP 1 of the DP that seeks, among other things, to ensure that all development proposals are sustainable, in terms of potential impact on residential amenity. It would also be inconsistent with the guidance in SPG 1² that seeks, among other things, to ensure that the outlook from adjoining properties is safeguarded. As a result, this aspect of the proposal would not be in accordance with the development plan.

² Supplementary Planning Guidance Note 1 - Residential Design Guide 2004

Conclusion

27. For the above reasons and having regard to all other matters raised I conclude that the appeals should be dismissed.

Roger Catchpole

INSPECTOR