
Appeal Decision

Site visit made on 3 May 2017

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 17th May 2017

Appeal Ref: APP/K3415/W/16/3161106
21 Main Street, Stonnall, WS9 9DX

- 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 Paul Bannister against the decision of Lichfield District Council.
 - The application Ref: 16/00229/FUL dated 4 March 2016, was refused by notice dated 9 September 2016.
 - The development proposed is a new two-storey dwelling adjacent to Elm Cottage and access drive and parking to Elm Cottage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have dealt with another appeal at this address by the same appellant (Ref: APP/K3415/Y/16/3165135). However, that appeal relates to the refusal of an application for listed building consent for extensions to Elm Cottage. Although this proposal includes a new access for Elm Cottage, the two appeals are not inter-linked, and concern different issues and regimes. Therefore, the listed building consent appeal will be the subject of a separate decision.

Main Issues

3. I consider the main issues in this case are:
 - i) The effect of the proposal on the setting of the adjacent Grade II listed Elm Cottage.
 - ii) The effect of the proposed dwelling on the living conditions of the occupiers of the adjacent dwelling No 23 Main Street with regard to outlook and light.
 - iii) The effect of the proposed access on protected trees within the site.

Reasons

4. It is proposed to erect a detached four bedroom dwelling in the eastern part of the large existing garden to Elm Cottage, close to the boundary with No 23 Main Street; roughly following the building line established by the properties to the north-east. The proposed dwelling would utilise the existing access, and a new access is proposed further west to serve Elm Cottage.

5. Elm Cottage is a Grade II listed building dating from the late 18th century, with minor 19th century alterations. It is a typical and attractive double-fronted brick built cottage with a tiled roof and cogged eaves.
6. The site lies in an established residential area within the settlement boundary of the village, and notwithstanding all other considerations the Council has raised no objections to the principle of residential development having regard to the policies of the development plan and the *National Planning Policy Framework* (the Framework).

Effect on setting of listed building

7. Sections 16(2) and 66(1) of the Act¹ require the decision-maker, in considering whether to grant listed building consent for any proposal affecting a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.
8. The development plan includes the *Lichfield Local Plan Strategy 2008-2029* (LP), February 2015, and the *Shenstone Neighbourhood Plan* (NP), made on 13 December 2016. Amongst other considerations, LP Policy BE1 seeks to achieve a high quality built environment that will have a positive impact on the significance of the historic environment. LP Core Policy 14 states the significance of designated heritage assets will be conserved and enhanced and given the highest level of protection. Whilst the Council has not cited any NP policies in its reason for refusal, they are referred to in its statement. Policy HB2 is most relevant and states that heritage assets within the area, especially listed buildings and their settings, must be protected, conserved and enhanced when development proposals are brought forward.
9. Paragraph 132 of the *National Planning Policy Framework* (the Framework) sets out that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to that asset's conservation. The Government's *Planning Practice Guidance* (PPG) also advises that a thorough assessment of the impact on setting needs to take account of, and be proportionate to, the significance of the heritage asset under consideration, and the degree to which the proposed changes enhance or detract from that significance or the ability to appreciate it. Although views play an important part, the way in which an asset in its setting is experienced in its setting is also influenced by spatial association and by an understanding of the historic relationship between places.
10. The Historic England (HE) *Good Practice Advice in Planning Note 3: the Setting of Heritage Assets* states that: "*Understanding the history of change will help to determine how further development within the asset's setting is likely to affect the contribution made by setting to the significance of the heritage asset. Settings of heritage assets which closely resemble the setting in which the asset was constructed are likely to contribute to significance*". It also refers to cumulative change, and states "*where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, consideration still needs to be given to whether additional change will further detract from, or can enhance the significance of the asset*".

¹ The Planning (Listed Buildings and Conservation Areas) Act 1990

11. The present large garden appears little changed from its original extent, as is evident from historic maps, and this historic plot form contributes to the significance of Elm Cottage. Much of the significance of the listed building derives from its spacious setting in a prominent location, and clearly has great rarity value as a relatively unaltered late 18th century vernacular cottage.
12. In my view the sub-division of the plot and the erection of a modern dwelling in such close proximity to Elm Cottage would be harmful to that setting. Whilst I accept that the wider setting has been fundamentally altered by modern suburban development to the east and south, the design of the proposed dwelling fails to reflect its context and specific location within the curtilage of a late 18th century listed building.
13. Paragraph 60 of the Framework does not attempt to stifle innovation, originality or initiative through requirements to conform to certain development forms or styles but says it is proper to seek to promote or reinforce local distinctiveness. In this regard I agree with the Council that the somewhat suburban housing style from which the design of the proposed dwelling appears to be taking as a 'cue' is not what contributes to the area's local distinctiveness. That derives rather more from the cluster of historic buildings around the Main Street, Lazy Hill, and Castle Hill junction.
14. I accept that revisions have been made to the design in an attempt to address the Council's design concerns. However, Elm Cottage and No 23 Main Street have narrow gables and steeply pitched roofs. These are traditional features which are not replicated in the design of the proposed dwelling which has a relatively low pitched roof and over-wide side gable elevations. The contribution of setting to the historic significance of an asset can be sustained or enhanced if new buildings are carefully designed to respect their setting through scale, proportion, height, alignment and use of materials. To my mind the proposed scheme fails to meet these objectives.
15. The Framework makes it clear that significance can be harmed or lost through alteration of the heritage asset or development within its setting. Recent case law refers to the considerable importance and weight to be given to the desirability of preserving building or its setting, or any features of special architectural or historic interest which it possesses. However, as stated in the Barnwell ruling², decision makers need to give '*considerable importance and weight*' to the desirability of preserving the settings of listed buildings when carrying out a '*balancing exercise*' in planning decisions.
16. For the reasons stated above I conclude on this issue that the proposal would result in harm being caused to the setting and the significance of the listed building. However, I am satisfied in this case that the degree of harm caused would be less than substantial. In such situations this harm should be weighed against any public benefits arising from a proposal.
17. I accept the appellant's desire to construct a new dwelling in a sustainable location close to the village centre. However, there are no demonstrable heritage benefits arising from the proposal, and other public benefits arising from the construction of one new dwelling are limited, particularly given that it would not contribute to the identified need for smaller dwellings set out in LP Policy 1 and in the NP. With that in mind, I conclude that the benefits involved

² Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG (2014)

do not come close to outweighing the harm that would be caused to the significance of the designated heritage asset.

18. The appellant suggests that the proposed development should be considered as enabling development to bring Elm Cottage "*back up the required standard from its current, insecure and uninhabited position*". Paragraph 140 of the Framework states that local planning authorities should assess whether the benefits of a proposal for enabling development (which would otherwise conflict with planning policies but would secure the future conservation of a heritage asset) outweigh the disbenefits of departing from those policies. The key public benefit is usually the securing the long term future of the heritage asset concerned.
19. Enabling development is a precisely defined concept which is explained in the HE Guidance: *Enabling Development and the Conservation of Significant Places*. It requires a complex task of assembling the application (by the applicant), and assessing it (by the planning authority). The basic proposition in enabling development is that there is a conservation deficit, where the cost of repair and conversion to beneficial use is greater than the market value on completion of those works, so that some cross-subsidy is required. However, the appellant has not followed the HE Guidance in attempting to present a full case for enabling development including a financial appraisal and a mechanism to ensure that restoration of Elm Cottage would be directly linked (and in effect subsidised by) the new dwelling. Therefore, the concept of the considering the proposed dwelling as enabling development, and affording it weight in the overall balance, does not arise.

Living Conditions

20. The Council says that the proximity of the proposed dwelling to No 23 Main Street would have an overbearing impact and result in a significant loss of light to the rear-facing windows of that property. Reference is made to LP Policy BE1 which, amongst other considerations, requires all development proposals to ensure that a high quality sustainable built environment can be achieved.
21. However, the spacing between the dwellings would be similar to that found elsewhere on Main Street, and whilst the proposed dwelling would project beyond the rear elevation of No 23, I do not consider that this would result in an overbearing form of development, notwithstanding the change in ground level. With regard to light, I accept that there would be some reduction of daylight and sunlight to the closest rear-facing windows and a small part of the garden of No 23. However, based on my own observations I am not persuaded that this would be materially harmful, or sufficient to withhold permission for this reason alone. My overall judgement on this issue is that the proposal would not materially harm the living conditions of the occupiers No 23 with regard to an overbearing development and loss of light. As such, I find no conflict with LP Policy BE1.

Trees

22. The proposed new access has severely substandard visibility of about 10.0m in the western direction (towards oncoming traffic), and for this class of road the required visibility would be 43m, 2.0m back from the carriageway edge³.

³ Manual for Streets 1 (2007)

Visibility in the eastern direction is less critical, as only vehicles visiting Elm Cottage should be using this section of road due to the no-entry sign. However, the Highway Authority has judged that the necessary western visibility splay, or very close to it, could be achieved by realignment of the frontage fence and cutting back or removal those trees and shrubs that fall within the splay.

23. However, the trees within the site are protected by a Tree Preservation Order (TPO 367-2013), and those close to the road frontage have a particularly high amenity value due in part to their prominent location. LP Policy NR4 concerns trees, and says these will be protected from damage and retained, unless it can be demonstrated that removal is necessary. It adds that potential conflict between retained trees and built form will be designed out at the planning stage. NP Policy LE3 requires development proposals to retain existing trees and hedgerows of good quality and/or visual significance.
24. The appellant has submitted an arboricultural survey and method statement⁴ which confirms that there are a number of closely spaced holly and cypress trees in the vicinity of the proposed access. However, visibility splays are not shown on the accompanying tree constraints plan, and as such it is not possible to assess how many trees would be affected. Based on my own observations it would appear highly unlikely that the visibility splays suggested by the Highway Authority could be provided without significant tree loss. This in turn would be harmful to the character and appearance of the area.
25. The trees are closely spaced in this part of the site and I accept that some modest tree loss or pruning may be acceptable to achieve a safe access. However, without the benefit of full information on this point, I agree with the Council that the proposal is likely to have a harmful impact on protected trees, contrary to the aims of LP Policy NR4 and NP Policy LE3.

Conclusion

26. To summarise, although I have found that the proposed dwelling would not materially harm the living conditions of the occupiers of the No 23 Main Street, the harm that would be caused to the setting of Grade II listed Elm Cottage, together with that to the site's protected trees, represent significant and overriding objections which must be conclusive.
27. Therefore, for the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

⁴ Lichfield Treeworks Limited