

Appeal Decision

Site visit made on 2 May 2017

by Peter Rose BA MRTPI DMS MCMi

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

Decision date: 23rd May 2017

Appeal Ref: APP/Z1510/W/16/3160864

76 Church Street, Coggeshall, Essex CO6 1TY

- 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 Neil Sansom and Mr Hugh Sansom against the decision of Braintree District Council.
 - The application Ref: 16/00402/FUL, dated 3 March 2016, was refused by notice dated 8 September 2016.
 - The development proposed is erection of 3 dwellings, access road, garages, parking spaces, foul and surface water drainage and landscaping on land within the curtilage of a listed building (76 Church Street) and bounded by a listed wall (to Horn Lane, to the south east of 76 Church Street).
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Decision

1. The appeal is dismissed.

Main issues

2. The main issues are:

(a) the effect of the proposed development upon the special architectural and historic interest of No 76 Church Street, a Grade II listed building and, in particular, whether or not the scheme would preserve its setting;

(b) whether or not the scheme would preserve or enhance the character or appearance of the surrounding Coggeshall Conservation Area, and;

(c) the effect of the proposed development with regard to existing open space.

Reasons

Listed building

3. The appeal site lies adjacent to, but largely to the rear of, No 76 Church Street, and includes part of its extensive rear garden. Adjacent to the appeal site is also a former coach house at No 72. A public recreation ground lies to the south-east but the surrounding area is otherwise predominantly residential in character.
 4. No 76 is a Grade II listed building comprising a large, detached and predominantly two-storey house dating from the seventeenth century, and which was variously altered and extended in the eighteenth and nineteenth centuries.
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5. The significance of No 76 as a building of special architectural or historic interest is both historic and aesthetic. The building is an example of a seventeenth century house displaying a wealth of architectural and historic features internally and externally. It is timber framed and plastered with a main façade of red brick. The building has extended wings, fully hipped roofs and a classically proportioned front façade.
6. To the front, the building follows the general building line of Church Street and thereby offers an imposing presence through its main elevation within the street-scene.
7. The rear elevation, however, is equally ornate and significant, but of contrasting form and setting. The rear elevation is of a more composite style of individual but highly complementary elements making for a less uniform plan form and elevation. Whilst the rear elevation has little, if any, public exposure from the south-east, the façade is set and experienced within expansive but private open grounds. The site slopes gently away from the building, and the overall impression to the rear is one of a large historic house set within, and facing towards, an extensive and relatively uncluttered domestic garden. This relatively open rear aspect reinforces the aesthetic value of the listed building by highlighting the impressive architectural and historic features of the asset in extensive views from the south-east.
8. The proposal would involve erection of three 4-bedroom detached dwellings within the existing rear garden and associated works, and would be served by access from Church Street.
9. The scheme was amended prior to the Council's decision. This involved a reduction in the size of the application site by re-siting Plot 5 further to the rear of the site and so increasing the size of the rear garden to be retained as part of No 76. Plot 5 would also contain a re-orientated dwelling and of reduced profile to that previously proposed.
10. The dwellings would be of a traditional design sympathetic to the listed building by reflecting features of existing properties in Church Street, and influences of the Arts and Crafts movement. I find that significant regard has been given to the sensitivity and overall quality of the design, and note contrasting references made by the appellants to other more recent developments in the vicinity.
11. The glossary to the National Planning Policy Framework (the Framework) defines the setting of a heritage asset to be the surroundings in which it is experienced, and indicates that its extent is not fixed and may change as the asset and its surroundings evolve.¹
12. Historic England's Historic Environment Good Practice Advice in Planning: 3 The Setting of Heritage Assets (GPA3), advises that the contribution of setting to the significance of a heritage asset is often expressed with reference to views, a purely visual impression of an asset, and including views of the surroundings from or through the asset. It explains that setting is not in itself a heritage asset, nor a heritage designation, and that its importance lies in what it contributes to the significance of the heritage asset.

¹ Page 56

13. GPA3 further advises that the contribution of setting to significance is not necessarily nullified if the asset is obscured or not readily visible. In considering whether the setting of a heritage asset makes a contribution to the significance of the listed building, it identifies such possible factors as the physical surroundings of the asset, the way the asset is appreciated, and the asset's associations and patterns of use.
14. The existing boundary wall to No 76 contains a stone which records part of the site's former use as maltings, and an historic plan of the site submitted by the appellants, possibly dating from 1834, shows part of this former facility and the remaining coach house. The maltings appear to have been demolished in the late nineteenth century since when a more open garden area has formed the immediate setting of the listed building. The County's Historic Building Consultant also states that mapping from 1896 onwards would appear to show the south-west section of the site (the location for Plot 3 and most of Plot 4) as being delineated as a separate area to the immediate rear garden of the listed building, as still partly visible on site.²
15. Nevertheless, notwithstanding undoubted historic change within the appeal site, the statutory listing appears to date from 31 October 1966, well beyond the time when the existing garden was created and became established, and the building's status was confirmed on that basis.
16. The existing spacious rear garden is integral to the significance of the listed building as a long-standing historic feature of the asset. It provides a resplendent and relaxed setting commensurate with the scale and character of a large and distinguished house and, historically, would have contributed both visually and functionally to its use and enjoyment.
17. Re-location of the summer house adjacent to the proposed realigned rear boundary seeks to help reinforce the traditional setting, but the extent of garden space would still be substantially reduced by the proposal and the existing relatively unconstrained, open setting would become far more enclosed by a combination of built form and planting. The resulting sense of encroachment and enclosure around the asset would change and deny key views to and from the building in a manner which would both alter the experience of the building itself in relation to the garden, but also alter the experience of the garden setting relative to the building.
18. The existing open setting is important for how the building is appreciated and understood, and I find this relationship would be curtailed and impeded by the imposing and invasive presence of the substantial built form and associated works as proposed.
19. I therefore conclude that the proposed scheme would be harmful to the setting of No 76 Church Street, a Grade II listed building, and thereby contrary to Policy RLP 100 of the Braintree District Local Plan Review Adopted Plan July 2005 (the Local Plan), and contrary to Policy CS9 of the Braintree District Council Local Development Framework Core Strategy 2011 (the Core Strategy).
20. Policy RLP 100 'Alterations and Extensions and Changes of Use to Listed Buildings, and their Settings' of the Local Plan seeks to ensure, amongst other

² Letter dated 11 April 2016

things, that proposals do not harm the setting and character of the asset, and that proposals should preserve and enhance the settings of listed buildings. Policy CS9 of the Core Strategy seeks, amongst other matters, to protect and enhance the historic environment by ensuring that development respects and responds to local context, especially where development affects the setting of historic or important buildings. I find these policies broadly consistent with the Framework.

21. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the decision-maker, in considering applications for planning permission, to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. I find that the scheme would give rise to significant harm. The special interest of the listed building would thereby be diminished and the significance of the asset would not be preserved.

Conservation Area

22. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty upon the decision-maker in considering applications for, amongst other things, planning permission, to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
23. The appeal site occupies a relatively central location within the Coggeshall Conservation Area. Whilst I have not been provided with details of any Conservation Area appraisal or management plan, the distinctive features of the Conservation Area would appear to relate to a diverse configuration of buildings and spaces of considerable architectural and townscape merit and variously contributing to the historic character of a unique and predominantly residential village.
24. This part of the Conservation Area would appear to be largely characterised by a built frontage to Church Street comprising a variety of building styles and forms. The immediate frontage comprises the northern ends of deep and physically varied curtilages each enclosing, and largely concealing from public view, significant areas of open land behind. Excepting the recreation ground to the south, the comparatively undeveloped character of these spaces contrasts with the relatively built frontages to Church Street and of surrounding sites. There is also a further loose arrangement of alleys and lanes of different forms leading off Church Street and opening up to various building plots behind.
25. The features of the listed building as already described, in turn, similarly contribute to the character and appearance of the wider Conservation Area. As a private garden of longstanding, the appeal site also provides a physical breathing space in an otherwise developed setting consistent with the Conservation Area's historic form and layout. The garden is a defining characteristic not just of the listed building but of the wider surroundings.
26. Plots 3, 4 and 5 would each be set towards the south-eastern end of the site and away from the Church Street frontage. The location of the three new plots, combined with enclosure by existing buildings, boundaries and planting mean they would be significantly screened in public views beyond the internal access road.

27. Aspects of the roofs and chimney stacks at Plots 4 and 5 may inevitably feature as various glimpsed views through and above boundary planting from the recreation ground and elsewhere but would not be harmful. Rather, such views would be of architectural features in-keeping with the townscape of the surrounding Conservation Area.
28. Given the limited exposure from the public domain and the quality of design, I find the scheme in itself would not be harmful to the appearance of the Conservation Area. It would, however, involve the loss of a significant historic open space and would so detract from its established character. The scheme would introduce substantial built form at the expense of open land and would so create a more developed character at odds with the historic layout of this particular part of the village. Rather than discreetly reinforcing a limited backland arrangement of lanes and alleys, the scale of development would be such as to incur the loss of a significant openness integral to the character of the Conservation Area.
29. I note relatively recent developments at Albert Place and Albert Gardens and the relative spacing and density of those dwellings, but little information is otherwise available to me regarding the particular circumstances of those decisions in particular regard to the Conservation Area.
30. I therefore conclude that the proposed development would give rise to modest harm to the character of the Coggeshall Conservation Area and would thereby be contrary to Policy RLP 95 of the Local Plan 'Preservation and Enhancement of Conservation Areas', and contrary to Policy CS9 of the Core Strategy. Policy RLP 95 seeks, amongst other things, to ensure that development does not detract from the character, appearance and essential features of designated Conservation Areas.

Open space

31. The appeal site lies within the Coggeshall Town Development Boundary/Village Envelope as defined by the Local Plan. Policy RLP 4 of the Local Plan, 'Prevention of Town Cramming' seeks, amongst other things, to resist development of those open areas within Village Envelopes and Town Development Boundaries which contribute to the character of the settlement. Whilst the policy is not criteria based and is cast in fairly broad terms, the accompanying narrative refers to the contribution to local identity, and to the importance of sites to local character in providing a break in an otherwise built-up area. There is also recognition that many such sites will be in private ownership with no public access.³
32. The most important of such spaces are identified as Visually Important Open Space (VIOS) on the Proposals Map. The appeal site is identified as part of one such wider allocation of VIOS set below the southern built frontage to Church Street. This allocation would not appear to comprise an existing single uniform area of land but, rather, largely involves a series of backland areas contained within separate curtilages.
33. The Council indicates this allocation is to be carried forward to its Braintree Draft Local Plan (the Draft Local Plan). Whilst Draft Policy ADM2 takes a generally permissive stance towards schemes within Development Boundaries,

³ Paragraph 3.15

it seeks to restrict development on Visually Important Space. I also note similar reference in Policy LLP35.

34. The appellants consider the extent of the existing garden to be disproportionate to the needs of future occupants of No 76, and indicate how the total footprint of the proposed buildings accounts for only a small proportion of the site. They explain how the proposals make sufficient provision for private garden space and for a satisfactory design and layout, and how there would not be an unacceptable impact upon the amenity of adjacent existing residents. In such circumstances, their conclusion is that the scheme cannot constitute the 'town cramming' which Policy RLP 4 seeks to avoid.
35. Reference has also been made to the deletion of a similar designation in relation to another site elsewhere, Gimsoms in Witham, as part of the Draft Local Plan process, and to the similarities drawn with the appeal site, and including proposals for subsequent housing development.
36. As already described, whilst the appeal site itself does not offer public access and has little exposure from the public domain, its presence is important in contributing to relative openness and in maintaining the visually distinctive, lower density historic character of this part of the village. The site contributes to this wider designation accordingly. The dispute is not about the quality of the accommodation proposed, around which there appears to be little contention, but, rather, about the opportunity cost in terms of loss of existing form and character.
37. The Framework indicates that local communities, through local and neighbourhood plans, should be able to identify for special protection green areas of particular importance to them⁴, and I note a degree of support for this space from local interested parties. This particular part of the VIOS designation may have some loose relevance to Local Green Space designation set out in the Framework⁵ insofar as it would hold a particular local historic significance as described. As a private residential garden in a built-up area, the site would also be excluded from the Framework's definition of previously built-up land.⁶
38. I therefore find that the scheme would lead to modest harm through a loss of openness and would so contribute to an erosion of the wider VIOS designation, and would thereby be contrary to Policy RLP 4 of the Local Plan.

Other matters

Housing land supply

39. The Framework identifies a need to deliver a wide choice of high quality homes, and to boost significantly the supply of housing. It requires local planning authorities to identify and update annually a supply of specific deliverable housing sites sufficient to provide five years' worth of housing against their housing requirements, and including an additional buffer of 5% or more.⁷
40. The Council considers that it has a 4.1 year supply of housing land and is therefore unable to demonstrate a five-year supply. At the point of

⁴ Paragraph 76

⁵ Paragraph 77

⁶ Page 55

⁷ Paragraph 47

submission, the appellants considered the authority to have a supply of less than 3.77 years. I also note reference by the appellants to a more recent officer report to the Council's Planning Committee dated 11 October 2016 and relating to Application Ref: 15/01372/FUL. This report contains a forecast supply for each of the periods 2016-2021 and 2017-2022 of 4.25 years.

41. I consider the Council is unable to demonstrate a five-year supply of deliverable housing land and, in that context, the proposed dwellings would make a modest contribution to the District's future housing needs, and particularly to the local circumstances of housing provision in Coggeshall.
42. In the absence of a five-year supply of housing land, it follows, by virtue of paragraphs 47 and 49 of the Framework, that relevant policies in the development plan for the supply of housing should not be considered up-to-date. Further, by virtue of being out-of-date, relevant provisions of the presumption in favour of sustainable development under paragraph 14 of the Framework would thereby be generally engaged. This is a matter to which I return in the particular circumstances of my findings as part of my overall planning balances.

Traffic

43. No objection is raised by the highway authority to the principle of the development and I have little reason to find any harmful implications in relation to the proximity of the proposed access to an adjacent bus stop, or in relation to pedestrian rights of way.

Living conditions

44. Aspects of the development would be likely to be visible from No 80 but, as with the limited public views described, I do not find that such a change in outlook would in itself be directly harmful in specific regard to neighbouring living conditions. The size and positions of the respective curtilages and dwellings would also not give rise to significant harm in relation to overlooking of No 80.
45. I also do not find the scheme would be harmful in relation to living conditions at No 4 or No 5 Albert Gardens, or in relation to occupiers of Albert Place. The Council states that the closest window of a habitable room in Albert Gardens would be located approximately 24.5 metres from the rear elevation of No 5 Albert Gardens. The Essex Design Guide requires a back-to-back distance of 25 metres between dwellings and the scheme would only just fall short of that distance. The appellants further advise that the rear elevation of the dwelling on Plot 4 would be a minimum of 15 metres from the boundary to No 5 Albert Gardens and the rearmost part of the dwelling on Plot 3 would be some 17 metres. The dwelling at Plot 3 would also have no upper floor windows that would enable direct views towards Albert Gardens or Albert Place.
46. Whilst the introduction of the additional dwellings would inevitably lead to greater general comings and goings, I do not find the scale of development would be likely to lead to an unacceptable impact upon adjacent living conditions in terms of noise or any associated disturbance.

Trees

47. The appellants' Tree Survey and related submissions dated 24 February 2016 identify a number of trees which require felling irrespective of development, and the appellants consider that no trees with any visual amenity value would have to be removed. The Council raises no objection to the proposed works but, should the development otherwise prove acceptable, this would be a matter requiring more detailed assessment and regulation through appropriate planning conditions.

Enabling development

48. The appellants state that the main house has not been properly maintained for the last 40 years and has been unoccupied for the last 3 years and refer to possible benefits in raising funds to facilitate modernisation and maintenance. That said, the appellants do not seek to engage the enabling provisions indicated in paragraph 140 of the Framework. Further, there is no mechanism before this appeal linking the proceeds of any development to reinvestment within the site. Whilst the appellants may be seeking to raise finances for works, I have little basis upon which to attach any significant weight to this consideration.

Listed walls

49. The adjacent separately listed garden walls would be generally unaffected by the scheme.

Draft Local Plan

50. Whilst reference is made in the evidence, preparation of the emerging Draft Local Plan has yet to be concluded. It does not form part of the Council's reasons for refusal and I have attached limited weight to such matters in accordance with the advice of the Framework.⁸

Precedent

51. I do not consider that a permission for the appeal scheme would represent a precedent for other sites elsewhere, but would instead necessarily reflect the specific planning merits of this particular proposal as identified and within the context of this site.

Other factors

52. A number of other matters are raised by interested local parties, including fire risk and drainage. These are not matters to which the Council raises objection, and I have little reason to conclude otherwise. Reference is also made to various civil matters, including the safety and maintenance of boundary walls and structural implications for adjacent properties, but these are not considerations relevant to the planning merits.

Sustainable development

53. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.⁹ The

⁸ Paragraph 216

⁹ Paragraph 49

purpose of the planning system is to contribute to the achievement of sustainable development.¹⁰ Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole.¹¹ The Framework further identifies economic, social and environmental dimensions to sustainable development.¹²

- 54. The scheme would provide housing benefits, and particularly so given that the authority is unable to demonstrate a five-year housing land supply. Such benefits would be consistent with the social dimension of sustainable development.
- 55. The investment represented by the development would also be consistent with the economic dimension.
- 56. In environmental terms, the scheme would involve harm to the setting of a Grade II listed building and to a Conservation Area, and a general loss of openness.
- 57. The site lies within the Local Plan's Designated Village Envelope and enjoys good access to local facilities and services.

Overall planning balances

- 58. The Framework, reflecting section 38(6) of the Planning and Compulsory Purchase Act, 2004, reminds us of the statutory status of the development plan as the starting point for decision-making.¹³ It explains that proposed development which accords with an up-to-date Local Plan should be approved, and that proposed development that conflicts should be refused unless other material considerations indicate otherwise.
- 59. I have found the proposal conflicts with the development plan for the reasons stated.
- 60. In terms of other material considerations, the Framework makes a distinction between development causing substantial harm to the significance of a designated heritage asset, such as a listed building or a Conservation Area, and proposals causing less than substantial harm.¹⁴ I consider the harm arising in connection with the setting of the listed building, and in relation to the character of the Conservation Area, to be less than substantial. The Framework requires less than substantial harm to be weighed against the possible public benefits of the scheme, including securing its optimum viable use.¹⁵ My assessment, reflecting the detailed findings set out, is that the less than substantial harm to these designated heritage assets would not be out-weighed in each case by the benefits arising.
- 61. The Framework also recognises that heritage assets are an irreplaceable resource and requires them to be conserved in a manner appropriate to their significance.¹⁶ It further states that when considering the impact of a proposed

¹⁰ Paragraph 6

¹¹ Paragraph 6

¹² Paragraph 7

¹³ Paragraph 12

¹⁴ Paragraph 134

¹⁵ Paragraph 134

¹⁶ Paragraph 126

development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.¹⁷

62. Although the Council is unable to demonstrate a five-year supply of deliverable housing land, this is a case where the restrictive policies of the Framework relating to the historic environment indicate that permission should not be granted. Mindful of Footnote 9 to the Framework as it relates to, and qualifies, paragraph 14, this is not therefore a case where the Framework as a whole supports a case in favour of the appeal.
63. Further, the statutory duties applicable under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 make strong presumptions against proposals incurring harm and thereby not preserving a designated asset. This is because the desirability of preservation is a consideration to which special attention must be paid as a statutory duty, and must be regarded as a matter of considerable importance and weight in any planning balance.
64. In accordance with section 38(6), I find the proposed scheme would not accord with the development plan, and that all other material considerations, and including all relevant expectations of sustainable development as set out in the Framework, do not indicate a decision in this instance other than in accordance with the development plan.

Conclusion

65. For the above reasons, the appeal is dismissed.

Peter Rose
INSPECTOR

¹⁷ Paragraph 132