
Appeal Decision

Site visit made on 8 May 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 24th May 2017

Appeal Ref: APP/P1805/W/17/3169734

33A, Fiery Hill Road, Barnt Green B45 8LE

- 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 and Mrs A and J Hodges against the decision of Bromsgrove District Council.
 - The application Ref 16/0793, dated 7 August 2016, was refused by notice dated 14 November 2016.
 - The development proposed is change of use from a flat linked to 33 Fiery Hill Road to a separate dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a flat linked to 33 Fiery Hill Road to a separate dwelling at 33A, Fiery Hill Road, Barnt Green B45 8LE in accordance with the terms of the application, Ref 16/0793, dated 7 August 2016, subject to the following 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: Elevations Existing/Proposed Drawing No 16 2461/2A; Plans, Section 1-1/Location Plans Drawing No 16 2641/1B.

Procedural Matter

2. The Council has adopted the Bromsgrove District Plan (2017) (BDP) since the application was refused. Accordingly, Policy S35A, which is listed in the reason for refusal no longer forms part of the development plan and has been replaced by BDP Policy BDP20. I must determine the appeal based on the policies in force at the time that I do so and am satisfied that the parties have had the opportunity to address this matter in their evidence and that they are not prejudiced in my taking the new policy into account.

Main Issue

3. The main issue on this appeal is whether the proposal would preserve or enhance the character or appearance of the Barnt Green Conservation Area (CA).
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Reasons

4. The appeal site contains a substantial detached dwelling and a later and more modest detached building that comprises a garage at ground floor level with flatted accommodation above. There is a notable contrast between the plainer style of the garage/flat and that of the main house which has some semblance of an Arts and Crafts style building and a greater horizontal emphasis facing Fiery Hill Road.
5. The Barnt Green CA is a designated heritage asset. Paragraph 132 of the National Planning Policy Framework (the Framework) says that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Policy BDP20 of the Bromsgrove District Plan (2017) reflects the Framework and statutory legislation relating to CAs. Amongst other things, the Policy seeks to prevent development from having a detrimental impact on the character, appearance or significance of designated heritage assets.
6. The available evidence indicates that 33A has been operating as a stand-alone dwelling for a number of years including being separately metred for its utilities and for payment of Council Tax. The proposal therefore seeks formal permission for its use as a stand-alone dwelling. However, it also includes the erection of a 1.8m high fence to physically subdivide the rear garden area to create separate and clearly defined plots to the two buildings.
7. Although Nos 33 and 33A currently share a common gated driveway, the marked contrast in their appearance serves to create a strong sense that there are two clearly separate dwellings on the overall plot. The evidence states that the Council has granted permission for a new access and single storey garage within the plot. I have nothing before me to suggest that the existing access will be stopped-up or that this permission will not be implemented. Therefore, the plot will have two separate accesses which will further reinforce the sense of there being two distinctly separate dwellings.
8. The proposal would result in No 33 retaining a large rear garden but would create a much narrower plot for No 33A in comparison. Whilst the CA comprises many large residential plots, this is by no means one of its defining characteristics as there are also many examples of narrower plots including some juxtaposed with wider neighbouring ones. There are also substantial areas that are much more open within the CA, particularly its western part. Overall, the CA therefore comprises a range of characteristics without the domination of any particular one over another.
9. The appeal site is well contained by vegetation, landform and the presence of surrounding residential development. The proposed fence and thus, the subdivision of the rear garden would therefore only be apparent from within the site. Moreover, given that Nos 33 and 33A sit well back from Fiery Hill Road, the rear garden is of modest depth. The proposed fence would therefore be of similarly modest length. Accordingly, the subdivision of the plot between the two buildings on the current site would not result in a readily perceptible change to the appearance of the CA.
10. I nonetheless acknowledge that the actual physical fabric of the CA should be preserved or enhanced. However, I consider that the change would be so minor that it would not have a harmful effect on the character of the CA.

11. Accordingly, the proposal would preserve the character and appearance of the CA and would not harm its significance. Thus, it does not run counter to Policy BDP20 or the Framework.

Conditions

12. I have specified the relevant drawings as this provides certainty. The Council has suggested that a condition should be imposed restricting certain permitted development rights within Classes A to E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Planning Practice Guidance (PPG) is clear that such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances. Furthermore, PPG also says that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
13. Whilst I recognise that the appeal site is within a sensitive location, it is wrong, in my view to restrict the rights applying to it when they could continue to be enjoyed by other residents living in properties within the CA. If the Council has concerns about the exercising of permitted development rights in the Barnt Green CA, it has powers under Article 4 of the GPDO to enable their withdrawal across this defined area. I have not been made aware that any such direction is in place. Notwithstanding all of this, the CA comes under the definition of Article 2(3) land within the GPDO so removal of Class B permitted development rights would not be necessary in any case. Accordingly, I do not consider the exceptional circumstances exist to justify the imposition of the suggested condition.

Conclusion

14. For the above reasons and having had regard to all other matters raised, the appeal succeeds.

Hayden Baugh-Jones

Inspector