
Appeal Decision

Site visit made on 16 May 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 14th June 2017

Appeal Ref: APP/Q3060/W/17/3169244

Land to the rear of 11 Western Terrace, The Park, Nottingham NG7 1AF

- 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 Phoenix Planning (UK) Ltd against the decision of the City of Nottingham Council.
 - The application Ref 16/00051/PFUL3 (PP-04625305), dated 12 January 2016, was refused by notice dated 1 November 2016.
 - The development proposed is part demolition and rebuilding of the southern and eastern boundary walls, including new gated entrance, lowering of ground level and regrading of site and removal of trees.
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Decision

1. The appeal is allowed and planning permission is granted for part demolition and rebuilding of the southern and eastern boundary walls, including new gated entrance, lowering of ground level and regrading of site and removal of trees on land to the rear of 11 Western Terrace, The Park, Nottingham NG7 1AF in accordance with the terms of the application, Ref 16/00051/PFUL3 (PP-04625305), dated 12 January 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: 101 Rev B, 201 Rev B, 202 Rev B
 - 3) Notwithstanding condition 2, no works or development shall commence until a specification of all proposed tree planting has been submitted to and approved in writing by the local planning authority. The specification shall include the number, size, species, pit specification and positions of all trees to be planted, how they will be planted and protected and when planting will occur. The tree planting shall be carried out in accordance with the approved specification. Any of the trees planted in accordance with the approved specification which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season.

Main Issue

2. The main issue in this appeal is the effect of the proposed development on the character and appearance of The Park Conservation Area.

Reasons

3. The appeal site is located within The Park Conservation Area. In the exercising of planning functions, the statutory test in relation to Conservation Areas is
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that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Policy BE12 of the Nottingham Local Plan and policies 10 and 11 of the Aligned Core Strategy are consistent with this test.

4. The Park Conservation Area covers a nineteenth century planned residential estate characterised by large houses spaciouly set within private gardens. The architecture of the houses reflects the era in which they were built and is of a high standard. Wide roads and pavements, roadside trees, tall boundary walls and mature landscaping form an important part of its character. The significance of the Conservation Area therefore is architectural and historical.
5. The appeal site forms the rear part of what was once the back garden to 11 Western Terrace. A number of trees are present on the site which sits at an elevated level adjacent to Pelham Crescent. A tall wall marks the boundary between the site, Pelham Crescent and the neighbouring plot to the east. With its lower courses built from sandstone and its upper courses from red brick, the wall makes a positive contribution to the character and appearance of the Conservation Area.
6. The wall is in poor condition. The sandstone courses require repointing and many of the bricks within the upper part of the wall are perished and have open mortar joints. A section of the upper part of the rear wall is also bowing towards the pavement to the extent that it could collapse. It is proposed to renovate the wall by partly demolishing and rebuilding it to match the existing structure and to create a wider timber gated entrance to replace the existing doorway. It is common ground between the Council and the appellant that this part of the proposal would preserve the character and appearance of the Conservation Area. Although there have been objections from third parties to the creation of a wider gated entrance, it would be not be wider than entrances that are characteristic of the area. As a consequence, I agree with the main parties that subject to the use of appropriate materials the part demolition and rebuilding of the southern and eastern boundary walls, including a wider replacement gated entrance would preserve the character and appearance of the Conservation Area.
7. A number of trees are located on the appeal site in the vicinity of the boundary walls described. These include a lime, two oaks and a silver birch, along with an unidentified bush and shrub. Whilst the roadside trees are more prominent features within the street scene, the trees on the appeal site collectively make a positive contribution to the verdant character and appearance of the Conservation Area. Two of the trees, the large lime to the rear and the oak closest to the boundary wall with Pelham Crescent, have good form and vigour and are also the subject of a tree preservation order (TPO) due to their noteworthy amenity value. Policy NE6 of the Local Plan only supports the cutting down of trees that are the subject of a TPO where it is necessary for valid arboricultural reasons, or to allow satisfactory development of a site.
8. It is proposed that all of the trees, other than the large lime to the rear, would be removed to facilitate the scheme and allow ground levels behind the rebuilt wall to be permanently reduced. The removal of the trees proposed on the site would adversely affect the verdant character of Pelham Crescent. However, the harm that would be caused to the character and appearance of the Conservation Area as a whole and its significance would be less than substantial.

9. In such circumstances, paragraph 134 of the Framework advises that the harm to the designated heritage asset, the Conservation Area, should be weighed against the public benefits of the proposal.
10. In accordance with the statutory duty, I attach significant importance and weight to the harm that would be caused to the Conservation Area. On the other side of the balance, the repair of the wall in the manner proposed, with reduced soil levels behind, would remove the existing risk to public safety of the wall collapsing and prevent a recurrence in the future of this risk. Removal of the trees would also allow contractors to safely rebuild the wall without the risk of the nearest and largest trees, in particular the TPO oak which is only 2m from the wall, falling on to them while such work takes place.
11. The Council's view is that such extensive works in terms of lowering ground levels and tree removal is unnecessary, and that the risk of tree collapse when rebuilding the wall does not justify removal of the TPO oak. However, on the basis of the submitted evidence, including from the appellant's structural engineer and arboriculturalist, I find, on balance, that the proposed works to be both reasonable and necessary.
12. Taking all these matters into account, my conclusion is that the public benefits of the proposal, in terms of the safety of pedestrians, other highway users and contractors rebuilding the wall, outweighs the harm that would be caused to The Park Conservation Area and its significance. Therefore, whilst the proposal would be contrary to policy BE12 of the Local Plan and policies 10 and 11 of the Aligned Core Strategy, it would comply with policy NE6 of the Local Plan and the Framework.
13. To provide certainty, development needs to be carried out in accordance with the approved plans. To help address the harm caused through loss of the trees on the site and comply with policy NE6, further details of the new trees to be planted are needed. The trees shown in plan ref 201 Rev B would be located to the rear of the site, rather than towards its middle. In addition, fewer replacement trees are proposed than would be felled. As a consequence, when mature, the contribution of the new trees on the site shown on this plan is likely to be markedly less than at present. I have therefore required, amongst other matters, that the number and location of trees is approved by the local planning authority. In order to ensure that they become well established the new trees also need to be maintained. I have secured these matters by condition.
14. A condition was suggested requiring that the wall is rebuilt utilising the existing materials. However, as plan ref 202 Rev B states that existing materials will be reused together with reclaimed bricks, and development is to be carried out in accordance with this plan, this condition is not necessary.

Conclusion

15. For the reasons given above, and having regard to all other matters raised, I therefore conclude that the appeal should be allowed.

Ian Radcliffe

Inspector