
Appeal Decision

Site visit made on 7 June 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 21 June 2017

Appeal Ref: APP/X2410/W/17/3170245

Land at Grey Crescent, adjacent 57 Main Street, Newtown Linford, Leicestershire LE6 0AT

- 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 Michael Gough against the decision of Charnwood Borough Council.
 - The application Ref P/16/1107/2, dated 19 May 2016, was refused by notice dated 22 November 2016.
 - The development proposed is residential development.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: (i) the effect of the proposal on the living conditions of the occupants of 57 Main Street, with regards to outlook, privacy and sunlight; (ii) whether the proposed development would preserve or enhance the character or appearance of the Newtown Linford Conservation Area (NLCA) and the setting of the nearby listed buildings, including the effect of the proposed removal of the protected Ash tree; and (iii) whether or not adequate arrangements are made for the storage of refuse and recycling bins, with regards to the effect on highway safety.

Reasons

Living conditions

3. To the north-east of the appeal site is the two storey cottage of No 57. It would be side onto the proposed dwellings. A two storey extension has been added to the rear of No 57 which has main habitable room windows at ground and first floors that face out into a garden area. The site is elevated above the garden of No 57 and there is a timber fence which runs along the boundary. The height of the fence varies between the appeal site and No 57.
 4. To address the difference in ground levels, they would in part, be reduced so that the dwellings would be flush with Grey Crescent. However, behind each dwelling would be raised garden while the existing fence would be raised, so that it achieves a 1.8 metre height above the ground level of the appeal site. Consequently, the uppermost part of the fence would be roughly level with the eaves height of No 57 and the proposed dwellings. As a result, this would
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significantly enclose the rear garden of No 57 and the outlook from the ground and first floor windows of this property which would be roughly 6 metres away. Despite the potential use of permitted development rights¹, it is unclear whether these could be used given the fall in ground levels at the boundary. Furthermore, consideration of any further changes to the ground levels of plots 1 and 2 would need to be done in a fresh application.

5. Although the fence line would only be marginally increased, it is, however, a change that would have a substantial effect, given the ground levels. This would lead to an obtrusive and dominate relationship that would extend along most of the rear garden of No 57. This would be harmful to the living conditions of the occupants', who would be unable, due to the increased height of the fence, to see the first floor and roof plane of the proposed houses².
6. Due to the orientation of the sun, any shadow cast by the proposed dwellings would more likely be over their rear gardens during the morning. This would also extend to the rear garden of No 57 and towards the ground floor kitchen. However, based on the evidence before me, which I recognise does not include an assessment³, I am not satisfied that the proposal would be unduly harmful compared to the current situation which is influenced by the existing fence line and the ground levels. Later in the day, the sun will move to the south of the appeal site. Thus, the proposal would not have any greater effect on the living conditions, in terms of sunlight, of the occupants of No 57 than the existing built form of this dwelling does.
7. In terms of privacy, the proposed dwellings would be somewhat short of the numerical standards set out in the Council's Leading in Design Supplementary Planning Document⁴ (LDSPD). Still, as the LDSPD explains the use of careful design can often address concerns relating to privacy. In this regard the respective windows would not directly oppose one another. Instead occupants would have varying oblique views and there would be no views to No 57 from the proposed ground floor windows due to the sunken terrace behind each dwelling. Moreover, the height of the raised fence along the rear boundary would screen views in both directions and from the proposed rear gardens, so that the privacy of each occupant would be preserved.
8. Notwithstanding my findings in respect of sunlight and privacy, for the reasons explained above, I conclude that the proposal would significantly affect the living conditions of the occupants of 57 Main Street, with regards to outlook. The proposal would not accord with Policy CS2 of the Charnwood Local Plan 2011 to 2028 Core Strategy (Core Strategy), Saved policy EV/1 of the Borough of Charnwood Local Plan 1991-2006 (Local Plan) and paragraph 17 of the National Planning Policy Framework (the Framework); which together seek, among other things, development to protect the amenity of people who live nearby in adjoining properties so that a good standard of amenity for all existing and future occupants of land and buildings is secured.
9. Even though the Council refer to the Newtown Linford Village Design Statement (VDS), I do not consider that it is relevant to this issue.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 2, Class A

² Appellant's Statement of Case, Figure 1

³ BRE document 'Site Layout Planning for Daylight and Sunlight: A guide to good practice (2011)

⁴ Appendix 4

Conservation area and listed buildings

10. The appeal site is within the NLCA which covers the linear development of the village along Main Street. Much of the village comprises of dwellings which generally have substantial spaces between them and the street. Main Street is described in the Council's Newtown Linford Conservation Area Character Appraisal (CCA) as a *broad loosely enclosed linear space with broad grass verges and some trees*, while Grey Crescent is an example of 1950s development that is split into two distinct parts. The part closest to the appeal site, *Nos 26-36 and 29-47 is a more enclosed street of semi-detached houses set behind privet hedges on low rendered walls. The houses are all of buff brick with tile roofs and uPVC windows.*
11. Adjacent to the site is the two storey 18th century grade II listed cottages of Nos 57 and 59. The cottages are set back and raised above Main Street. They are constructed of granite and slate rubble stone rendered with a thatch roof while swithland slate is used to the right-wing and slate on the left-wing.
12. The appeal site lies in the limits to development for the village and is well screened by four protected trees and a hedgerow. Of the four trees, two are middle-aged Ash that are in a good condition with a minimum of a 20 year life expectancy. Both trees are placed into category B which means that they make a significant contribution to the area. The site lies on a rising bend in Grey Crescent that is set back from Main Street. Ground levels gradually fall from north-east to south-west and they are between one and two metres above footpath level. The site, in a previous appeal decision⁵, was described as *"an undeveloped buffer between an elevated row of modern semi-detached houses and the lower lying listed buildings alongside Main Street."*
13. Paragraph 132 of the Framework explains 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."*
14. The dwellings, especially plots 1 and 2 would be close to the front of the site. They would not accord with the characteristic set back of properties outlined in the CCA and the VDS. This form of development is, in the VDS described as causing a loss to the open character of the settlement.
15. The dwellings would also form a stepped terrace with a plan form that departs from that of the cottages at Nos 57 and 59 and the dwellings on Grey Crescent near to the site. As a result of the rising ground, the site's position and the removal of T1, the new dwellings would be visually prominent, despite their scale being broadly in tune with the wider street scene. However, collectively these factors mean that the dwellings would be of a different form and would not reflect the substantial spaces between properties and the street that is softened by trees and broad grass verges. So, while traditional materials and architectural details would be used, the proposal would lead to a significant harm to the character and appearance of the NLCA and the listed buildings which would be magnified by the loss of a protected Ash tree. The result would be a prominent form of development which would fail to preserve or enhance the character or appearance of the NLCA and the listed buildings.

⁵ Appeal Decision Ref: T/APP/5302/A/79/3109/G2

16. The VDS also explains that panel fences are discouraged in locations visible from public places or roads and they should normally not exceed 1.5 metres in height. The proposed rear boundary fence would be visible in part from Grey Crescent, while the fence to the side of plot 3 would be run next to the road. Both boundaries would be above the recommended height and as such, they would harm the character and appearance of the NLCA and the listed buildings.
17. Although concerns are raised with the relationship of the car port to Main Street, this is not a view that I share, due to the adjacent garage and the proposed scale, design and use of materials. Furthermore, I do not consider the scheme represents an over-development of the site.
18. In terms of refuse and recycling receptacles, given the practicalities of moving these from the rear gardens of plots 2 and 3 up and down stairs, occupants' would need to store them either at the rear of the car port or in another location. Despite the inconvenience of storing them behind parked cars, collections do not typically take place every day and occupants' could move their vehicles as and when required. By doing so, they would not need to be stored at the front of the houses. I do not consider that the refuse and recycling receptacles would harm the character and appearance of the NLCA and they would have a neutral effect on the setting of the listed buildings.
19. Overall, I consider the proposal equates to a less than substantial harm to the heritage assets. I recognise this is not a substantial harm, but to do so, the harm would need to be of an exceptional level. This is a high test, which the proposal does not meet⁶. Even so, the less than substantial harm still amounts to a harmful impact which adversely affects the significance of the heritage assets. As such, the proposal would not preserve the setting of the heritage assets or better reveal their significance⁷. Paragraph 132 of the Framework states that "*as heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.*" Thus, as per paragraph 134 of the Framework this must be weighed against the proposal's public benefits.
20. Public benefit would stem from the provision of three market houses on a windfall site that would contribute, albeit modestly to widening⁸ and addressing the need for two and three bed family dwellings in the borough⁹. There would also be opportunity for a custom builder or a small developer to build out the scheme¹⁰ promptly. The site is also in a sustainable urban location suitable for small-scale development, despite the bus service and unlike the scheme at Lower Packington Road¹¹.
21. It is unclear what price the proposed houses may be placed on the market for. So, while they will widen the chance of home ownership, I am unable to conclude that they will provide more affordable homes in the village, despite the generally high prices shown in the evidence.
22. Drawing these points together, I consider that the harm to the NLCA and the listed buildings would, to which I attach considerable importance and weight, in my view, outweigh these combined modest public benefits. I therefore

⁶ Planning Practice Guidance, Paragraph 017, Ref ID: 18a-017-20140306

⁷ National Planning Policy Framework, Paragraph 137

⁸ National Planning Policy Framework, Paragraph 50

⁹ Housing and Economic Development Needs Assessment (HEDNA) and Housing Supplementary Planning Document, HSPD9

¹⁰ Fixing Our Broken Housing Market, Department for Communities and Local Government

¹¹ Appeal Decision Ref: APP/G2435/A/14/2217036

conclude, on this issue, that the proposed development would harm the character and appearance of the heritage assets, including through the loss of a protected Ash tree. The proposal would not preserve or enhance the character or appearance of the NLCA or preserve the setting of the listed buildings. The proposal would be contrary to Core Strategy Policies CS2 and CS14, saved Local Plan Policy EV/1, the LDSPD, the VDS and Paragraphs 132 and 134 of the Framework. Together these seek development to, among other things, make a positive contribution through high quality, inclusive design that respects and enhances the character of the area and any neighbouring buildings and spaces, having regard to its layout; use existing features, such as trees as a focus around which new development is designed, so that it preserves the setting of heritage assets.

Refuse and recycling

23. There is no specific area designated for the storage of refuse or recycling receptacles. While the use of the rear garden may be a realistic option for the occupants' of plot 1, it is very unlikely to be suitable for the occupants' of plots 2 and 3. Occupants' of these two plots would, for collections, need to use a staircase in order to do so. This is not practical, especially for the larger refuse receptacles I noted in the area on my site visit.
24. Even though the carports were not designed to store refuse or recycling receptacles, the rear wall could be used for their storage. This would, enable occupants' to place the receptacles for collection on the crescent. Still, this does not account for the presence of potentially two vehicles for each property. These would likely to cause an obstruction. However, equally I am not satisfied that this would prevent vehicles using the proposed spaces, as collections do not typically take place every day and occupants' could, if required, make use of the on-street provision near to the site on Grey Crescent while they move their receptacles onto the crescent.
25. On this basis, I conclude on this issue that the proposal would comply with Core Strategy Policies CS2 and CS16, saved Local Plan TR18 and the LDSPD. Collectively these seek to support proposals that reduce waste, provide adequate space for the suitable storage of waste and allow convenient waste collections so that developments function well over their lifetime and there is off-street parking for vehicles to secure highway safety.
26. Despite comments to the contrary, I do not consider the VDS is relevant to this issue.

Other Matters

27. The appellant engaged with the Council at pre-application, but despite the comments made and the subsequent officer recommendation, the Council and indeed elected members are not bound by this advice. While suggestions are made that the minutes of the plans committee meeting do not reflect the discussions that took place, if necessary, this would be a matter for the Council to address. Even so, I have considered this appeal on its planning merits.
28. Concerns are raised with the position of the car ports on a bend, the effect of traffic movements, highway safety and parking provision. The proposal would meet to the Council's parking standards and the crescent has footpaths on both sides. There is also good visibility on the crescent which can be used for on-

street parking away from its junction with Main Street. So, despite the two hourly bus service, the scheme would not result in severe effects on highway safety. Also, the effect of any construction traffic would be temporary.

29. Although a resident comments that no amendments have been brought forward following the Council's decision, the appellant does have a right of appeal against this decision and I have considered this appeal on the basis of the plans that are before me. The appellant would need to re-apply for planning permission if they were to revise their scheme in any event.

Conclusion

30. I have found no harm from the appeal scheme in relation to refuse and recycling. This is outweighed, however, by the harm that I have found in relation to the scheme's impact upon living conditions and to the heritage assets. Furthermore, I am not satisfied, that this otherwise unacceptable development could be made acceptable through the use of planning conditions.
31. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR