

Appeal Decision

Site visit made on 12 June 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 30 June 2017

Appeal Ref: APP/P3040/W/17/3172000

Charnley, Thelda Avenue, Keyworth NG12 5HU

- 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 Peter Atkin against the decision of Rushcliffe Borough Council.
 - The application Ref 16/02889/FUL, dated 15 November 2016, was refused by notice dated 17 February 2017.
 - The development proposed is '*erection of garden building to form granny annexe*'.
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Decision

1. The appeal is allowed and planning permission is granted for erection of garden building to form granny annexe at Charnley, Thelda Avenue, Keyworth NG12 5HU in accordance with the terms of the application, Ref 16/02889/FUL, dated 15 November 2016, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Peter Atkin against Rushcliffe Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The description of development provided by the application form has been updated by subsequent documents. I adopt the description provided by the Council's decision notice as it provides greater certainty in concisely reflecting the proposal before me.

Main Issues

4. The main issues are:
 - the effect on the character and appearance of the area, with particular regard to a neighbouring tree adjacent to the site, and;
 - the effect on the living conditions of occupiers of neighbouring properties, with particular regard to 17 Debdale Lane and matters of outlook and light.

Reasons

Character and appearance

5. Charnley is a two storey detached house with a single storey rear extension that lies within a predominantly residential area where there are a variety of properties of different size, style and at different land levels due to the downward slope along Thelda Avenue in a northern direction. The difference in
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land levels includes a gentle slope within a generous rear garden which is at a lower level than the main dwelling. The rear garden currently has an existing detached garage on an area of hardstanding located in close proximity to the side boundary which adjoins 17 Debdale Lane (No 17). The garage links to the driveway at the side of the property.

6. The proposal involves the demolition of the existing garage and replacement with a single storey detached building of an increased footprint. Based on the submitted plans, it would be a single bedroom unit including a kitchen/lounge and washing facilities. The appellant's evidence indicates that it would provide accommodation for an elderly relative in need of care. The submitted plans also show that the building would share the access and would not have its own private curtilage. Consequently, I am satisfied that the proposal would not constitute a separate dwelling, as the relationship with Charnley does not lend itself to the building operating as an independent dwelling.
7. The garden area to the rear of the main house and at the side of the annexe would be retained. The remaining shared garden would be of sufficient size to adequately serve the amount of living accommodation associated with Charnley overall and its character and appearance would endure as a single garden. Although the garden would not be suitable for use by two independent dwellings because neither household would have a satisfactory level of privacy, such an arrangement is not proposed. The occupation of the building as ancillary to Charnley could be secured by condition so that it would remain part of a single household and, therefore, privacy would not be an issue.
8. The building would be of a modest single storey height and would not be of a disproportionate size when compared to the main dwelling, despite an increase in footprint above that of the existing garage. It would be largely screened from views along Thelda Avenue and Debdale Lane due to its set back position behind the respective houses. Furthermore, its prominence would be reduced from Manor Road at the rear due to the presence of intervening garage blocks and a large Ash tree in the neighbouring garden. In that context, the timber walls and glazing would give the appearance of a large, but subservient, garden building which would not appear out of place. The building would, therefore, be of an appropriate design that would preserve the character and appearance of the area where there is a variety of size and style of properties.
9. In reaching the above findings, I have taken into account that the Council have previously refused planning permission for demolition of the existing garage and to erect a replacement double garage with store. However, based on the evidence before me, the previous proposal involved a much taller building and in any case, I determine this appeal on its own merits.
10. The neighbouring Ash tree is located within the rear garden of No 17 in close proximity to the shared boundary with the appeal property and with a canopy spread that extends over part of the existing garage. Based on my observations, the tree although not protected by a preservation order is a mature specimen that is in good health and makes a positive contribution to the character and appearance of the area.
11. The Council have expressed concern in terms of the effect of the development on the health of the tree and the potential for its loss, in the absence of information relating to installation of services for the building including drainage. In that regard, it is reasonable that given the canopy spread of the

tree that some roots lay beneath the footprint of the proposed building. However, I observed that the existing roots within the site lie at depth below an existing concrete slab under the garage and an additional retaining wall to a lower depth in the adjoining garden of No 17 due to the difference in land levels. In such circumstances, given the depth of the existing root system and taking into account that the annexe would be constructed on a concrete raft rather than requiring foundations, I am satisfied that the development would not have an adverse effect of the health and longevity of the existing tree. The method and location of excavations, including for drainage and services, could be suitably controlled by condition to mitigate any risk in that respect.

12. I conclude that the development, subject to the aforementioned conditions, would not have an unacceptable impact on the character and appearance of the area. The proposal would not, therefore, conflict with Policy 10 of the Rushcliffe Local Plan Part 1: Core Strategy (CS), adopted December 2014 which seeks to ensure new development is of an appropriate design and reinforces valued local characteristics. The policy is consistent with the National Planning Policy Framework (the Framework). The proposal also would not conflict with Policy GP2 of the Rushcliffe Borough Non-Statutory Replacement Local Plan (NS-LP), adopted December 2006, which seeks to ensure that new development is sympathetic to the character and appearance of neighbouring buildings and the surrounding area and seeks retention of existing trees. Although the NS-LP is not part of the development plan, Policy GP2 is afforded significant weight as a material consideration, as it is broadly consistent with the Framework.

Living conditions

13. The existing detached garage within the rear garden of Charnley towards its northern side boundary lies close to the rear boundary of the garden of the neighbouring 17 Debdale Lane (No 17). The appeal proposal involves the demolition of the existing garage and replacement with a single storey flat roof building constructed on a concrete slab which would be installed at existing ground level based on the evidence before me.
14. The proposed building, although of a modest height compared to Charnley due to its single storey nature, would consist of a more substantial depth of built form with an increased scale, bulk and massing when compared to the existing detached garage. As a consequence, it would be a more noticeable feature above the existing boundary fence when viewed from No 17 despite its set in from the boundary by 0.5m, with the visibility emphasised by the upward slope of the rear garden of the neighbouring property towards the shared boundary.
15. However, the rear garden of No 17 is of a sufficient length, so that the building although visible would not seem overbearing, oppressive or intrusive upon the main property which is around 25m away or its lawn and patio areas immediately surrounding. From those perspectives, notwithstanding the difference in land levels, the prominence of the building would be reduced for most of the year by intervening screening afforded by trees and shrubs within the raised terraced areas of planting towards the rear boundary. The separation distance of the development to the main building, lawn and patio areas would also be sufficient to prevent any overshadowing effect upon the dwelling and those areas.

16. The raised terraced areas of planting and a greenhouse toward the furthest extent of the rear garden of No 17 already experience dappled shading for a significant period of the year from the middle of the day onwards due to the canopy spread of the large Ash tree in close proximity to the shared boundary. In winter months when the tree is not in leaf, when the sun is in its lowest positions to the south and when direct sunlight would generally be most restricted, the existing boundary fence also causes limited periods of overshadowing on those areas.
17. The additional height of the building above the fence has the potential to marginally increase the terraced areas of planting of No 17 which would be affected by overshadowing. However, as the effect would be for only part of the day and at very limited times of year, when the sun would be at a low position in the sky, the resultant loss of sunlight and daylight would not have a significant impact on the enjoyment of the existing rear garden. Consequently, the limited overbearing and overshadowing effect upon the planting areas and greenhouse arising from the visible presence of the upper part of the building, above a tall boundary fence at a raised land level, would not have an undue or unacceptable impact on the existing living conditions of No 17. In addition, the existing boundary fence would appropriately screen a proposed window serving a bathroom in the facing side elevation of the building which would prevent any overlooking or loss of privacy of the rear garden. Furthermore, a condition could be imposed to secure obscure glazing to prevent overlooking if the height of the fence were to be altered at any time in the future.
18. The appeal proposal would preserve the living conditions of the occupiers of all other neighbouring properties in terms of outlook, privacy and light provision, due to the cumulative effect of greater separation distances involved, existing tall boundary treatments, intervening vegetation and differences in land levels.
19. A family member occupying an annexe rather than residing within the main house would not add significantly to activity levels within the site overall. Nevertheless, it could intensify activity within the rear garden. However, as there is already an existing outbuilding in that location, I do not consider that any increase in activity would result in harm to neighbouring residents in terms of noise and disturbance given the separation distances involved.
20. I conclude that the development would not result in an unacceptable impact upon the living conditions of the occupiers of neighbouring properties, including 17 Debdale Lane with respect to matters of outlook and light provision. The proposal would not, therefore, conflict with Policy 10 of the CS in so far as it requires that development is assessed in terms of impact on the amenity of nearby residents. The policy is consistent with the core planning principle of the Framework which seeks a good standard of amenity for all existing and future occupiers of land and buildings. There would also be no conflict with Policy GS2 of the NS-LP, which although not part of the development plan is a material consideration, in so far as it seeks to ensure no significant adverse effect upon the amenity of adjoining properties or the surrounding area including in terms of overbearing, undue overshadowing or loss of privacy.

Other Matters

21. As the development would be for a granny annexe with accommodation ancillary to the occupation and function of Charnley as a single dwelling, it would not in itself make a contribution to the supply of housing in Rushcliffe.

Whilst, the relocation of an elderly parent to the ancillary accommodation could make an existing house available, there is limited evidence relating to that matter and therefore, I afford little weight to it.

22. The development would involve the loss of an existing garage. However, there are significant areas of hardstanding to the front and side of the property which could accommodate parking for Charnley and any modest increase in car parking demand arising from the development. In any case, there is no substantive evidence that Thelda Avenue is subject to on-street parking pressure to an extent that any demand arising from the proposal would be detrimental to local highway conditions. I, therefore, consider that the proposal would not have a harmful effect on highway or pedestrian safety.
23. The appellant refers to the fact that the planning decision was contrary to officer advice and expressed concerns relating to the Council's approach in considering the application when making its decision. Furthermore, I note that pre application advice was sought. However, such advice is generally offered without prejudice to the outcome of any subsequent application, as are any amendments suggested by the officer. The planning application was determined by Members of the Planning Committee and the Planning Committee are not obliged to follow the recommendation of their officers. The Council's approach in determining the application is not, therefore, an influential factor on the outcome of the appeal.
24. Interested parties have raised the issue of restrictive covenants that apply to the site. However, I see no reason why the grant of planning permission would supersede any private legal rights relating to land ownership or a leaseholding. Consequently, those matters fall outside of my jurisdiction and have not had any material bearing on my assessment of the planning issues in this appeal.

Conditions

25. The Council provided a suggested list of conditions which I have considered relative to paragraph 206 of the Framework and Planning Practice Guidance. The standard conditions regarding the time limit and plans compliance are imposed to provide certainty in terms of the planning permission granted. A condition to secure the proposed materials is necessary. Furthermore, as previously mentioned conditions requiring agreement of an arboricultural method statement, obscure glazing of the side window and to ensure that the building remains ancillary to Charnley, are required to make the development acceptable.

Conclusion

26. I have found no harm relating to the development in terms of the character and appearance of the area or the living conditions of occupiers of neighbouring properties. I, therefore, consider that the proposal complies with the development plan and the Framework when taken as a whole.
27. For the reasons given above and taking all other matters into consideration, I conclude that the appeal should be allowed and planning permission granted as set out in the formal decision, subject to conditions in the attached schedule.

Gareth Wildgoose

INSPECTOR

SCHEDULE

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: Location Plan dated 24 August 2016; Block Plan dated 21 September 2016; drg.no. 1045-PA - Annexe Design.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drg. no. 1045-PA - Annexe Design.
- 4) No ground excavations shall take place until a scheme for appropriate working methods (the arboricultural method statement) in accordance with British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The arboricultural method statement shall include excavation by hand or with suitable equipment, how exposed roots should be protected, how small roots can be cut back, how to backfill around retained roots and the location of any excavations required, including for the provision of drainage or other services. The development shall be carried out in accordance with the agreed arboricultural method statement.
- 5) Prior to the first occupation of the building hereby permitted, the window in the northern elevation of the granny annexe which serves a bathroom as shown on the approved plans, shall have been fitted with obscure glazing. No part of the window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscure glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 6) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Charnley.