
Appeal Decision

Site visit made on 14 June 2017

by B Bowker Mplan MRTPI

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

Decision date: 14 July 2017

Appeal Ref: APP/W2465/W/17/3169615

Oxford Grange Phase 2, 36 Grange Lane, Leicester LE2 7EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Oxford Grange Limited against Leicester City Council.
 - The application Ref 20161609 is dated 8 August 2016.
 - The development proposed is described as 'two storey extension to provide for the development of 16 student flat/studios (comprising a total of 40 bed spaces)'.
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Decision

1. The appeal is allowed and planning permission is granted for a two storey extension to provide for the development of 16 student flat/studios (comprising a total of 40 bed spaces), at Oxford Grange Phase 2, 36 Grange Lane, Leicester LE2 7EH, in accordance with the terms of the application Ref 20161609 dated 8 August 2016, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Oxford Grange Limited against Leicester City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council state that had it been in a position to determine the application, it would have refused permission on the grounds outlined in the main issues below.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the surrounding area and the setting of a non-designated heritage asset;
 - Whether the proposed development would provide future occupants satisfactory living conditions with reference to external open space; and,
 - The effect of the proposal on the living conditions of occupants residing at 61 Oxford Street, with particular reference to sunlight and outlook.

Reasons

Character and appearance

5. The appeal site is a five storey student accommodation building surrounded by buildings in similar use. The site has a frontage onto Grange Lane where surrounding buildings vary in height from five storeys to eight. The eight storey height of 22 Grange Lane (which extends to 53-55 Oxford Street) and the sixth storey height of No 61 Oxford Street are to the immediate north and east of the site. The Swan and Rushes Public House is to the south east, listed on the local heritage asset register and thus a non-designated heritage asset for the purposes of the National Planning Policy Framework (the Framework).
6. During my site visit I saw that views of the appeal building from Oxford Street are limited owing to the height and visual containment provided by surrounding buildings. Despite the additional height proposed, the appeal building would be subordinate to adjoining properties and thus would retain a limited presence on the street scene of Oxford Street. Taking into account the scale of surrounding buildings and separation distances involved, the proposal would not have a harmful effect on the Swan and Rushes Public House which is orientated away from the site.
7. Views of the proposal from Grange Lane would include the eight storey height of No 22 Grange Lane. The resultant seven storey height of the appeal building would be seen as a step up from the five storey height of No 52 Grange Lane to the eight storey height of No 22. In this respect the scale proposed would not be dominant in the street scene of Grange Lane.
8. By virtue of its detailed design and palette of materials, the Council consider that the existing building does not make a positive contribution to the street scene of Grange Lane. That said the building is an existing part of the street scene and was permitted in 2009. The matching design proposed would ensure the building does not become a dominant or discordant feature in the street scene. Furthermore, the use of appropriate materials across the front elevation would ensure that the appeal building as a whole has a greater level of consistency with adjoining buildings. Conditions relating to materials and elevational details as suggested by the Council would ensure that the existing building further blends into the street scene.
9. In reaching this view I have taken into account the Council's Student Housing Supplementary Planning Document (SPD). Of relevance, the SPD seeks to ensure that the scale of development does not adversely conflict with adjacent properties or the general residential environment of the surrounding area. Based on my reasoning above, the proposal would not conflict with this SPD requirement.
10. In the context of my statutory duty, I have considered the effect of the proposal on the setting of the Grade II listed Luke Turner Building. The Council have raised no concern on this basis and I agree with the reasoning put forward by the appellant that the intervening buildings ensure that the proposal would not harm the setting of the Luke Turner Building.
11. Therefore the proposal would not have a harmful effect on the character and appearance of the surrounding area. Consequently the proposal would meet the requirements of Core Strategy (CS) Policies CS3, CS6 and CS18 and paragraphs 56 and 135 of the Framework. Combined, these policies require development to be of a good design that contributes positively to the character and appearance of the built environment and takes into account Leicester's history and heritage.

Future Occupants

12. The external amenity space to the rear of the appeal building comprises a part paved and grassed area. As it is surrounded by large buildings on all sides, it is already overshadowed to a large extent as I saw during my mid-afternoon site visit. However, taking into account the appellant's submitted shadow diagrams, the proposal would have a comparatively limited effect on the levels of sunlight reaching the external amenity space.
13. As is the case with the host building and adjoining student accommodation, future occupants would not have balconies. The proposal would provide 40 bed spaces and thus would markedly increase use of the external amenity space. In this respect I share the Council's concerns regarding the levels of external open space available to future occupants.
14. The proposal would also increase the number of residents located within a ward that the Council state has a deficiency in green space. As the opportunity to create new green open space is limited within the Castle ward, the Council seek a financial contribution of £17,117.60 to make quality improvements to green open space at Museum Square. The contribution would be the first sought in relation to the project which would have a total approximate cost of £160,000. The contribution sought has been calculated using methodology contained in the Council's Green Space Supplementary Planning Document (SPD).
15. The Council state that the Museum Square is approximately 550m from the appeal site and on a pedestrian thoroughfare that links the city centre with Victoria Park. The appellant considers there are nearer and more suitable green spaces and parks, including at Nelson Mandela Park. Taking into account the distance and levels of access identified by the Council, I consider it reasonable that future student occupants are likely to use the open green space at Museum Square. Consequently, I am satisfied that the contribution is both necessary and directly related to the development.
16. However, the amount of contribution sought by the Council is contested by the appellant. Two Unilateral Undertakings are before me, one which proposes a contribution of £17,117.60 and the other £2117.60. There is a significance difference between the figures put before me. Whilst both contributions are based on methodology outlined in the Green Space SPD, no substantive or detailed cost calculations are before me to enable a meaningful comparison between the figures. Consequently I am unable to conclude with any certainty which contribution would be fairly or reasonably related in scale and kind to the development. Therefore both contributions fail to meet statutory test (c) of Regulation 122 of The Community Infrastructure Levy Regulations 2010. Thus the contributions have not been taken into account in my determination of the appeal.
17. Therefore the proposed development would not provide future occupants a satisfactory living condition with reference to external open space. Consequently the proposal would be contrary to CS Policy CS6 which seeks to protect residential amenity and provide quality development. The proposal would also be contrary to section 2 (e) of the Council's Student Housing SPD which seeks to ensure development layout standards and facilities ensure a positive living experience.

Neighbouring Occupants

18. The south west facing elevation of 61 Oxford Street faces towards the rear of the appeal building. Taking into account the existing height of No 61 and the appeal building and the separation distances involved, the existing outlook for the majority of occupants residing at the lower storeys of No 61 comprises built form. Similarly, the existing relationship between No 61 and the appeal building affects the levels of day and sunlight available for the majority of neighbouring occupants residing at No 61.
19. The proposal would provide upper storey neighbouring occupants with a level of outlook and day/sunlight similar to that experienced by the majority of occupants who reside at No 61. No substantive evidence is before me to demonstrate that existing levels of outlook and day/sunlight have caused unacceptable harm to the living conditions of neighbouring occupants. Furthermore, as anticipated by the appellant's shadow diagrams, the resulting effect on neighbouring levels of sunlight would be limited.
20. Therefore I conclude that the proposal would not have a harmful effect on the living conditions of occupants residing at 61 Oxford Street, with particular reference to daylight, sunlight, and outlook. Consequently the proposal would meet the requirements of CS Policy CS6 which seeks to protect residential amenity.

Planning Balance

21. It is common ground between the parties that the Council cannot currently demonstrate a five year supply of housing land. Consequently it is agreed that paragraphs 49 and 14 of the Framework apply. Based on the evidence before me, I have no reason to disagree with the consensus reached on this matter.
22. Paragraph 14 of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. A number of benefits are put forward in support of the proposal.
23. The proposal would result in economic benefits by supporting the growth of the University of Leicester and De Montfort University, creating construction employment and by generating additional spend in the local economy. These factors attract moderate weight in favour of the appeal. Social benefits would arise via the development providing 16 flat/studios to meet student accommodation needs which in the context of the Council's housing land supply shortfall attracts significant weight in favour of the appeal. Environmental benefits are identified via the proposal's utilisation of an existing building with high standards of energy efficiency and its location in an area with good connections to the City Centre, transport and university facilities. These environmental benefits attract moderate weight in favour of the proposal.
24. Based on my reasoning above, the proposal would not result in harm to the character and appearance of the locality nor to the living conditions of neighbours residing at No 61. However, an absence of harm can only be considered as neutral factors in the planning balance. I have identified harm to the living conditions of future occupants by virtue of the inadequate open amenity space available at the site and green space in the vicinity. I afford this harm some weight against the proposal.

25. However, in this case and in the context of paragraph 14 of the Framework, the resultant harm to the living conditions of future occupants would not significantly and demonstrably outweigh the combined benefits (noted above) associated with the proposal when assessed against the policies in the Framework taken as a whole. I consider this to be a significant material consideration to outweigh the conflict of the proposal with CS Policy CS6 insofar as it relates to the protection of residential amenity. It is on this basis that the appeal should succeed.

Conditions

26. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording in the interests of precision and clarity in order to comply with advice given in the Planning Practice Guidance.
27. I have imposed a condition specifying the relevant drawings as this provides certainty. Prior to development conditions relating to materials and elevational details are necessary to protect the character and appearance of the host building and surrounding area.
28. As foul drainage is subject to separate regulations this suggested condition is not included. Condition 7 is necessary prior to the commencement of development to ensure the construction process does not harm biodiversity interests. Conditions 8 and 9 are necessary in the interests of water drainage and biodiversity respectively.
29. To limit disturbance to occupiers of surrounding properties, the Council's suggested conditions relating to demolition and construction times are included. Prior to occupation conditions to secure acceptable refuse and recycling provision and relating to noise insulation and ventilation details are required to secure satisfactory living conditions for future occupiers. Conditions 5 and 16 are necessary to meet the requirements of CS Policy CS6.
30. Prior to occupation of flat/studio conditions requiring the submission of a travel plan and cycle storage details are necessary for highway safety and sustainable transport purposes.

Conclusion

31. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

B Bowker

INSPECTOR

Attached – schedule of conditions

Schedule of 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: 16/71 01 site location plan, 16/71 02a site layout, 16/71 03 additional storeys extension plans, 16/71 04 additional storeys elevations, 16/71 08a roof plan, 16/71 09a additional storeys street scene.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Development shall not commence until large scale (e.g. 1:20) drawings including sections showing typical design details which shall include curtain walling, window treatment (including sections and reveals) roof edges, balustrades, vents, grilles and rain water goods, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) The flats/studios hereby permitted shall only be occupied by students enrolled on full-time courses at further and higher education colleges or students working at a medical or educational institution, as part of their medical or education course.
- 6) Prior to the commencement of development full design details of how the development will provide a community heating and hot water system served by air source heat pumps shall be submitted to and approved by the local planning authority. No flat/studio shall be occupied until evidence demonstrating satisfactory operation of the approved scheme including on-site installation has been submitted to and approved by the local planning authority.
- 7) Prior to the commencement of development a bird survey (including black restarts) shall be submitted to and approved in writing by the local planning authority. Should evidence of birds be found appropriate mitigation measures, such as the carrying out of works outside of the bird nesting season and migration period (September to February in any one year), shall be implemented in accordance with details first submitted to and approved in writing by the local planning authority. If development does not commence within 2 years of the last survey being completed, a further survey, and mitigation measures if necessary, shall be submitted to and approved in writing by the local planning authority.
- 8) No flats/studio shall be occupied until roofing treatments, such as a brown roof to provide wildlife habitats and visual amenity, have been investigated and subsequently implemented in accordance with details first submitted to and approved in writing by the local planning authority.
- 9) No flats/studios shall be occupied until bat bricks/tiles/boxes and bird boxes have been installed in accordance with details first submitted to and approved in writing by the local planning authority. The approved features shall be retained thereafter.

- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) Demolition or construction works shall take place only between 07.30 – 18.00 hours on Mondays to Fridays and 07.30 – 13.00 hours Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 12) No development shall take place until details of refuse and recycling provision have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the occupation of the flat/studio to which the provision relates, and retained as such thereafter.
- 13) No flats/studio shall be occupied until details of secure and covered cycle storage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the occupation of the flat/studio to which the provision relates and shall thereafter be kept available for the storage of cycles.
- 14) No flats/studio shall be occupied until a Travel Plan taking into account the existing Travel Plan for Evans Student Living has been implemented in accordance with details first submitted to and approved in writing by the local planning authority. The Travel Plan shall be maintained and implemented in accordance with the approved details.
- 15) No flats/studio shall be occupied until an insulation scheme, including ventilation arrangements, to prevent the transmission of noise into the development has been installed in accordance with details submitted to and approved in writing by the local planning authority.
- 16) No flats/studio shall be occupied until a management plan for the long term management of the accommodation and site has been submitted to and approved in writing by the local planning authority. The site shall subsequently be managed in accordance with the approved plan.

- End of schedule