
Appeal Decision

Site visit made on 4 July 2017

by Rachael A Bust BSc (Hons) MA MSc LLM MEnvSci MInstLM MCMI MRTPI

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

Decision date: 04 September 2017

Appeal Ref: APP/P1045/W/17/3173143

The Old Cottage, Main Street, Kirk Ireton, Derbyshire DE6 3LD

- 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 S & G Patel against the decision of Derbyshire Dales District Council.
 - The application Ref 17/00030/FUL, dated 15 January 2017, was refused by notice dated 15 March 2017.
 - The development proposed is the erection of a single dwelling to land to the rear of The Old Cottage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single dwelling at The Old Cottage, Main Street, Kirk Ireton, Derbyshire DE6 3LD in accordance with the terms of the application, Ref 17/00030/FUL, dated 15 January 2017, subject to the conditions set out in the Schedule to this decision.

Preliminary and Procedural Matters

2. This appeal proposal follows on from previous applications and appeals on the rear garden to The Old Cottage. Planning permission was refused¹ for two dwellings, (one to the western part and the other to the eastern part) and subsequently dismissed at appeal². A second application was refused³ for one dwelling on the western part, and was allowed on appeal⁴. I have had regard to these previous appeal decisions, but I have in any event determined this appeal on the basis of the evidence before me.
3. This appeal proposal does not include the demolition of the ancillary stone building to the side of The Old Cottage which would be required to facilitate access into the site. From my site visit I saw that the demolition process was substantially complete.

Main Issue

4. The appeal site is located within the Kirk Ireton Conservation Area. This is a designated heritage asset and I am mindful of my statutory duties under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in this regard. The main issue is whether or not the proposed development would

¹ 15/00842/FUL, dated 20 November 2015

² APP/P1045/W/16/3156391, dated 29 November 2016

³ 16/00307/FUL, dated 26 April 2016

⁴ APP/P1045/W/16/3157642, dated 29 November 2016

preserve or enhance the character or appearance of the Kirk Ireton Conservation Area.

Reasons

5. The appeal site is the eastern part of the large rear garden to The Old Cottage which is a detached two storey house within the historic core of Kirk Ireton. The significance of the Kirk Ireton Conservation Area (KICA) lies, in part in the way it contains a number of traditional stone cottages, houses and other buildings. Collectively they form an attractive, high quality environment that reflects the evolution of this historic settlement. The KICA has a unified character which is demonstrated through its historic building core. The building distribution within the historic core is relatively dense. The buildings fronting onto Main Street are broadly set in line with each other and are part of the historic core. Part of the character of the KICA is that there is variation in the position and siting of buildings to each other, as such creating a more interesting pattern of development. The appeal site is not within the setting of any Listed Buildings within the KICA and also not close to other buildings identified as landmarks in the Conservation Area Character Appraisal.
6. Saved Policy NBE21 of the Derbyshire Dales Local Plan (DDLDP), adopted 2005, indicates that development proposals within Conservation Areas will be granted permission provided that they preserve or enhance the character or appearance of the area. General design considerations are set out in Saved Policy SF5 and for new housing design Saved Policy H9 is also relevant. The National Planning Policy Framework (the Framework) has been published since the adoption of the DDLDP; however, I consider that there is general consistency between the aims and objectives of these policies and the Framework.
7. Spaces, gaps and open areas are important to the overall character and appearance of the Conservation Area. The Conservation Area Character Appraisal identifies a number of green spaces within the village confines that contribute positively to the character and appearance of the KICA. The appeal site is not identified as one of these green spaces. The Old Cottage is one of the older properties along Main Street and its large curtilage to the rear forms part of an undeveloped space in the village. The previously allowed appeal has already permitted the partial loss of this undeveloped space. This appeal proposal would lead to an additional loss of this undeveloped space. It now turns to examine the contribution that the remaining portion of undeveloped space makes to the character and appearance of the KICA.
8. The space feels somewhat detached from Main Street and the historic frontage properties. It may be visible from the rear of some nearby residential properties; however, it is not at all prominent from the public realm. On balance I therefore consider its contribution to the character and appearance of the KICA is limited.
9. Having regard to the varied housing design and layout, and mindful that the development would not be prominent; I find that the appeal proposal would not be visually intrusive or result in a form of development that would not be incongruous to the local and historic context.
10. Although there are many buildings of a traditional design, there are examples of more modern development of simple design within the KICA, such as Peats Close. The overall result is that the character and appearance of the KICA has

changed over time. Many of the buildings are constructed in sandstone with clay roof tiles which gives the village some cohesiveness. Accordingly the materials for the proposed two bedroom detached bungalow of natural stone and clay tiles are similar to those found within the KICA.

11. Turning to the siting of the proposed dwelling, given that the site is not seen as part of the more formal Main Street, the slight angle would not harm the character of the KICA. I find that there would sufficient distance between it and the previously approved dwelling to the west. It sits in a more central position within the plot, but retains sufficient amenity space around for future occupiers.
12. I conclude that the simple design, form, proposed siting and materials would preserve the overall character and appearance of the KICA and would not prejudice the setting of Listed Buildings or landmark buildings within the KICA. As such, the proposal would preserve the character and appearance of the KICA and not harm the significance of the heritage asset. Accordingly the appeal proposal meets the requirements of Saved Policies NBE21, SF5 and H9 of the DDLP and para 131 of the Framework.

Other matters

13. I am aware of concerns raised by interested parties. These include living conditions, with respect overlooking, privacy, height and light; parking and local school places; trees and wildlife; construction disturbance, and property values.
14. The Inspector who determined both previous appeals concluded that no harm would arise to the character and appearance of the KICA. I note that the first appeal was dismissed because of the effects on the living conditions to the occupiers of the neighbouring property of 'Greenway.' Since the dismissal of the first appeal the proposed development was amended in the planning application which is now the subject of this appeal. In determining this planning application the Council expressed no concern regarding living conditions and this did not form a reason for refusal.
15. Whilst the Council considered that there would be no impact on the living conditions of the occupiers of nearby properties, some residents have raised concerns regarding overlooking and privacy. In terms of the evidence before me and my observations on the site, the surrounding properties, except for 'Greenway' are two-storey and already higher than the proposed single storey bungalow. All existing dwellings are sited a sufficient distance away to maintain privacy. The closest properties being those on Ireton Court, however the obscure glazing proposed in the eastern elevation facing Ireton Court would be sufficient to protect privacy. The elevation viewed from the bungalow of 'Greenway' to the south has no proposed openings and thereby would not lead to any overlooking. There would be no loss of light to existing properties arising from the proposed single storey bungalow. The glazing, boundary treatments and landscaping are matters which can be satisfactorily controlled through planning conditions thereby mitigating any impact on neighbouring properties and protecting character and appearance.
16. Concerns have been raised regarding impacts on the highway, parking provision and school places. The Highway Authority has not provided any observations on this proposal. However, I note that the access arrangement

and parking provision is the same as the dwelling to the west which was allowed subject to suitably worded conditions. Accordingly without any further detailed evidence, there is no reason why the same conditions would not be relevant in this appeal. In relation to the local school, there is no evidence before me that indicates that there is an existing capacity problem.

17. I have had regard to the evidence submitted regarding the trees, notably an apple tree (TR01) on the site and the Lawson's cypress tree located inside the boundary of 'Greenway'.
18. The apple tree is substantial and mature, but it is not visible from the public realm and as such its contribution to the KICA is limited. Furthermore, it does not exhibit any defined special qualities that would justify its retention. It would be too close to the proposed dwelling to be retained, accordingly it would therefore need to be removed. The loss of the apple tree would not harm the character and appearance of the KICA.
19. The young Lawson's cypress tree is not within the appeal site and is therefore outside of the control of the appellants. It is not protected in its own right through the means of a Tree Preservation Order; however it is within the KICA. There is some disagreement between parties regarding the impact on this tree, and the extent of the root protection area required. The appellants' arboriculture report suggests that the matter could be addressed by foundation design. I note that the British Standards guidance⁵ suggests that younger trees can generally withstand more root-loss than more mature trees. Although this young tree is likely to suffer limited adverse effects from the construction, it would be reasonable to impose a planning condition regarding root protection measures to ensure its long-term well-being.
20. I note the statement in the British Standards document regarding future pressure for removal. However as the young tree remains within the boundary of 'Greenways' it is not within the control of the future occupiers of the proposed dwelling. The impact on both trees would not be a sufficient enough reason on its own to withhold planning permission.
21. Although construction would cause some disruption, it would be temporary and could be mitigated with careful construction management.
22. Submissions were made relating to Article 8 of the Human Rights Act and I recognise that if the appeal is allowed it would interfere with the neighbours' home and family life. This consideration must be balanced against the rights and freedoms of others, however, and in the light of my findings above I am satisfied that the effects on the occupiers of 2 Laurel Mount would not be disproportionate. For the same reasons given in respect of Article 8, I consider the interference with the neighbours' peaceful enjoyment of their property is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.
23. Finally, the issue of impact on property values has also been raised. It is a well-founded principle that the planning system does not exist to protect private interests such as the value of land or property. Accordingly this particular matter has not had any material bearing on my assessment of the planning issues within this appeal.

⁵ BS 5837

Conditions

24. The Council have suggested a number of conditions to which I have had regard. In addition to the standard condition which limits the lifespan of the planning permission, I have specified the approved plans as this provides certainty. Conditions requiring the submission and prior approval of materials, design details and in respect of landscaping details and timescales are necessary in the interests of preserving the character and appearance of the Conservation Area. A condition to ensure the root protection of the Lawson's cypress tree within 'Greenway' is also necessary to ensure its long-term well-being.
25. I have also specified conditions relating to the provision of space for site accommodation, storage of plant and materials, parking and manoeuvring of site operatives' and visitors' parking, together with the loading, unloading and manoeuvring of goods vehicles and the laying out of spaces for car parking and turning in the interests of highway safety.
26. The submitted plans clearly show the position of refuse, recycling and garden waste bins within the curtilage of the proposed dwelling. Consequently, I do not find it necessary to impose a condition relating to bin storage. Whilst the submitted plans indicate the provision of obscure glazing to the eastern elevation, I consider it necessary to ensure that this is provided and retained through the imposition of a specific condition in order to protect the living conditions of neighbouring properties.
27. I have not, however, imposed a condition removing permitted development rights to extend or alter the building or erect structures within its curtilage. Planning Practice Guidance advises that such conditions should only be imposed where there is clear justification to do so. I am not satisfied that such a justification has been presented to me and therefore I do not find it necessary.

Conclusion

28. Having had regard to all other matters raised, it is concluded that the appeal should succeed and planning permission should be granted subject to conditions.

Rachael A Bust

INSPECTOR

Schedule of Conditions (8 in total)

- 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 approved plans: 01-001 rev 001 (site location plan); 01-002 rev 001 (site plan proposed block plan); 01-101 rev 001 (proposed floor plans ground and roof level layouts); 01-301 rev 001 (proposed elevations); 01-302 rev 001 (proposed site section A-A); and 01-303 rev 001 (proposed site section B-B) all for Project Number 20349.
- 3) The dwelling shall not be occupied until space has been laid out within the site in accordance with drawing no. 01-002 rev 001 (site plan proposed block plan), for 2 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.
- 4) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted and approved in writing by the local planning authority. This shall include stonework, roofing materials, windows and doors including colour and recess, downpipes and guttering. The relevant works shall be carried out in accordance with the sample details.
- 5) The dwelling shall not be occupied until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) an indication of existing trees, hedgerows and other vegetation on the land;
 - ii) retained trees, hedgerows and other soft landscaping features where relevant;
 - iii) measures for the protection of retained vegetation during the course of the development;
 - iv) soil preparation, cultivation and improvement;
 - v) all plant species, planting sizes, planting densities, the number of each species to be planted and plant protection;
 - vi) earthworks showing existing and proposed finished levels or contours ;
 - vii) means of enclosure and retaining structures;
 - viii) boundary treatments; and
 - ix) hard surfacing materials.

The soft landscaping works shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants 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 with others of similar size and species. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of the dwelling or in

- accordance with a programme to be agreed in writing with the local planning authority.
- 6) No development shall commence until details of root protection works have been submitted to and approved in writing by the local planning authority together with a timetable for its implementation. The development shall be carried out in accordance with the approved details and timetable. These details shall include: any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area of the Lawson's cypress tree within 'Greenway'; and all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced).
 - 7) Prior to the commencement of any development space shall be provided within the site for site accommodation, storage of plant and materials, parking and manoeuvring of site operatives' and visitors' vehicles, together with the loading, unloading and manoeuvring of goods vehicles in accordance with a scheme to be submitted to and approved in writing by the local planning authority prior to the commencement of development. Once implemented the space shall be retained free from any impediment to its designated use throughout the construction period.
 - 8) The building hereby permitted shall not be occupied until the windows on the eastern elevation have been fitted with obscured glazing and a restricted opening mechanism. Details of the type of obscured glazing and restricted opening mechanism shall be submitted to and approved in writing by the local planning authority before the windows are installed. Once installed the obscured glazing and restricted opening mechanism shall be retained thereafter.

End of Schedule