
Appeal Decision

Site visit made on 30 October 2017

by **Jonathan Hockley BA(Hons) DipTP MRTPI**

Decision date: 17th November 2017

Appeal Ref: APP/T3725/W/17/3180658
122 Leicester Lane, Leamington Spa CV32 7HH

- 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 Mark Jackson & Mr Earl Sweeney against the decision of Warwick District Council.
 - The application Ref W/17/0581, dated 28 March 2017, was refused by notice dated 26 May 2017.
 - The development proposed is residential development. Construction of five new houses following demolition of existing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the dismissal of the application that forms the basis of this appeal, the Warwick District Local Plan 2011-2029 (the Local Plan) was adopted. Policies in the previous Local Plan which are referred to in the decision notice have been superseded. The Council and appellant had the opportunity to refer to such changes in their statement and final comments respectively. I have considered the appeal on the basis of the current development plan. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Main Issues

3. The main issues in this case are as follows:
 - The effect of the proposed development on the character and appearance of the surrounding area;
 - The effect of the proposal on the living conditions of the residents of No 126 Leicester Lane, and of those of the future occupiers of the proposal;
 - The effect of the proposal upon matters of biodiversity.

Reasons

Character and Appearance

4. Leicester Lane lies along the northern fringes of Leamington Spa, and is a reasonably busy 'A' road, with, in the vicinity of the appeal site, residential

development located on its east side and open countryside on its west side. The residential development mainly takes the form of detached houses or bungalows which largely fill the width of their plots. The front building line varies somewhat along the road but there are generous roadside verges and front gardens. The line of development is only broken by Telford Avenue some way to the south of the appeal site, which accesses further residential development set behind the road. Most properties have long back gardens backing onto the rear gardens of properties located on Stirling Avenue behind.

5. The proposal seeks to demolish No 122 Leicester Lane, a red brick dormer bungalow, constructing a narrower property in its place and using the plot width to build an access road to allow 2 pairs of 2 semi-detached dwellings in the rear garden of the house. This garden is wider than most in the locality due to its rear width encompassing land to the rear of the adjacent property to the north, No 124 Leicester Lane. The garden includes a range of brick built structures which appear as small houses but seemingly lack full facilities, and a range of landscaping in the form of hedges and trees are located on the site, mainly around its boundaries.
6. The introduction of a new road to access the rear of the site would appear out of place within the street scene which consists of houses and outbuildings/garages largely filling their plot widths. Similarly, the new proposed house at the site entrance would also appear narrow when considering the footprint of other nearby properties. The view which would be created down the proposed drive of a dead end would also appear incongruous within an area characterised by such a strong form of development. When taking all such factors into account, the proposal would lead to a development that would appear fairly cramped and out of character with the surrounding area.
7. I am directed to other backland development in the area, at Tachbrook Drive. However, this area lies on the other side of the town and hence has a different character and appearance to the appeal site in this case. Other decisions in places across the country are also cited in evidence. In certain locations clearly backland development may be designed so it is appropriate and causes no harm to the character of the area; however, in this case I am of the view that the proposal would mark a clear departure from the prevailing pattern of development in the area. Furthermore, each case must be considered on its own merits.
8. I therefore conclude that the proposed development would have an adverse effect on the character and appearance of the surrounding area. The proposal would be contrary to policy BE1 of the Local Plan, which states that new development will be permitted where it positively contributes to the character and quality of its environment through good layout and design. Proposals will be expected to harmonise with or enhance the existing settlement in terms of physical form and reinforce or enhance the established urban character of streets. The proposal would also be contrary to the National Planning Policy Framework, which states that good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people.

Living Conditions

9. The proposed layout plan details the two pairs of detached houses, which would be located largely in the area of garden behind the plot belonging to No 124. The semi-detached dwellings are designed with their outer elevations being longer than the attached walls, which leads to the family breakfast rooms at ground floor and bedroom above being sited at the rear of the plots, closest to the boundary of the site with that of No 126 Leicester Lane to the north.
10. Along this boundary there is a range of landscaping, but given the proximity of the rear elevation of the proposed houses, noted by the Council to be some 8m from the boundary, the large windows of the rear bedrooms would have fairly clear views into the rear garden of No 126, particularly during winter months when the effects of any landscaping and natural screening would be diminished. This would cause harm to the living conditions of the occupiers of this house, affecting their enjoyment of the use of their private rear amenity space, and would be contrary to the provisions within the Residential Design Guide¹ (RPG) which states that windows at high level should not overlook private gardens if they add significantly to existing levels of overlooking. Due to the existing pattern of development in the area this would be the case in this instance.
11. To overcome this issue the appellant has suggested that these windows are obscure glazed up to 1700mm and restricted in opening. However, the windows would serve what appears to be one of the largest bedrooms in the properties, and the windows would be the only source of light for the rooms. The obscure glazing and restricted opening of these windows would not provide suitable living conditions for the future residents of these properties. This is confirmed by the SPG, which states that in certain instances small non opening windows with obscure glazing may be acceptable for non-habitable rooms. In this instance the window would not be small, and the rooms are habitable.
12. I therefore conclude that the proposal would, with clear glazed windows, have an adverse effect on the living conditions of the residents of No 126 Leicester Lane; and with the proposed mitigation of obscure glazing and restricted opening would have an adverse effect on the living conditions of the future occupiers of the proposal. This would be contrary to policy BE3 of the Local Plan, which states that development will not be permitted that has an unacceptable adverse impact on the amenity of nearby uses and residents or does not provide acceptable standards of amenity for future occupiers of the development.

Ecology

13. A preliminary ecological appraisal has been submitted by the appellant. This states that No 122 has the potential to support crevice-dwelling bat species, with hanging tiles evident that could harbour bats, although no evidence was found. However, evidence of bats was found in one of the rear garden structures and access to a loft space in a further outbuilding which was identified as having potential for bats was not possible. Due to this, the appraisal states that detailed bat surveys of the house and the 2 outbuildings would be required prior to demolition of the buildings, a view that the Council agrees with.

¹ Warwick District Council Residential Design Guide April 2008.

14. The appellant is of the view that such surveys could be conditioned. However, in such circumstances Circular 6/2005, Biodiversity and Geological Conservation, states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by a proposed development, is established before permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The Circular states that conditioning surveys to determine such matters would only be appropriate in exceptional circumstances.
15. The initial appraisal indicates that protected species may be present and the need for more detailed surveys is not in dispute. Such surveys would be required prior to determination to enable a decision to be made as to whether the scheme would have an adverse effect on protected species, and if so, whether any such adverse effect could be overcome by mitigation. Such information cannot be reasonably conditioned in this case.
16. I therefore conclude that on the basis of the information provided, the proposal would have a negative effect upon matters of biodiversity. The proposal would be contrary to Local Plan policy NE3, which states that development will be permitted provided that it protects, enhances and/or restores habitat diversity. Proposals will be expected to ensure that they lead to no net loss of and avoid negative impacts on existing biodiversity.

Other matters

17. The appellant raises certain concerns with the Council's demonstration of a five year supply of deliverable housing sites and considers that I should treat such figures with caution. In considering this matter I note the recent adoption of the Local Plan and the examination process that has thus been carried out into such a supply, and also note that the supply outlined by the Council is of the order of some 6.62 years. The removal of 'small urban SHLAA sites' that the appellant raises continuing concerns over would also still leave a supply in excess of 5 years.

Conclusion

18. I have concluded that the proposal would have an adverse effect on the character and appearance of the surrounding area, and upon the living conditions of the residents of No 126 Leicester Lane. Proposed mitigation to address the latter issue would result in an adverse effect on the living conditions of the future occupiers of the proposal. Furthermore, I consider that insufficient information has been provided to enable a determination to be made on ecological grounds.
19. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jon Hockley

INSPECTOR