



Appeal Decision

Site visit made on 5 August 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Appeal Ref: APP/C1570/W/19/3228197

The Conifers, White Horse Lane, Newport, Essex CB11 3RG

- 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 & Mrs R Norman against the decision of Uttlesford District Council.
 - The application Ref UTT/18/2732/HHF, dated 30 September 2018, was refused by notice dated 18 February 2019.
 - The development proposed is erection of garage, workshop and garden store with games room above.
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Decision

1. The appeal is dismissed

Procedural Matter

2. My site visit confirmed that construction of the building has commenced and is nearing completion. I have therefore determined the appeal on the basis that retrospective permission is sought for a permanent building. I have taken the description of the proposal from the application form as the additional text on the Council's decision notice referring to 'Section 73A' and 'retrospective' are not acts of development.
3. From the evidence before me and what I saw on site, there are additional windows in situ which are not shown on the elevation annotated 'Rear (North)' on the submitted drawings. Given I am dismissing the appeal, I have not sought rectification of this matter at this late stage.
4. The Council's appeal questionnaire confirms that there is a separate appeal Ref. APP/C1570/C/19/3231369 relating to the enforcement aspect of the development before me. However, this is a separate matter and not for me to assess under an appeal made under s78 of the Act.

Main Issues

5. The main issues are:
 - whether the proposed development would preserve or enhance the setting of heritage assets; and
 - whether the proposal would result in increased flood risk for occupants of the host dwelling and neighbouring properties.

Reasons

Character and appearance

6. The Conifers is a detached brick-built bungalow of modest proportions and of basic design. The site is situated at the end of a private drive within the Newport Conservation Area (CA). The significance of the CA derives from its original linear form along Cambridge Road, Belmont Hill and High Street and the number of historic buildings situated along this route. Grade II Listed Buildings at The Links, Belmont House and The Distaff and their large gardens are situated along the main street and back on to White Horse Lane helping to give the part of the CA where the appeal site is situated a soft landscaped, village edge character. The appeal site is bounded by the garden serving The Links as well as by a railway embankment and a watercourse to other boundaries.
7. The outbuilding is of contrasting design to the host dwelling with first floor accommodation and dark stained timber panelling to its facades. It has a large footprint comparable to The Conifers and sits close to the host dwelling and to the side boundary with the Listed Building at The Links. I acknowledge there are examples of buildings with dark stained timber facades within the local vernacular. However, as a result of the visible first-floor accommodation, and its tight positioning next to The Conifers, it competes visually with the scale of the host dwelling and is prominent in views towards the site on the private drive and from the rear windows and garden serving The Links.
8. I am conscious that planning permission was previously granted on the site for an outbuilding which was smaller in footprint but of comparable height to the building subject of this appeal. However, the additional mass of the appeal proposal and the provision of modern fenestration including UPVC windows frames, particularly those at first floor level in the elevations facing White Horse Lane and The Links, increases the prominence of the building and results in fenestration that does not respond well to the traditional materials seen more generally within the CA. As a result of these factors the building appears incongruous within the CA setting and does not preserve or enhance the character or appearance of the CA. Furthermore, the setting of The Links is not preserved.
9. The appellant contends that the railway embankment to the east and the substantial tranche of trees to the north assist in screening the development and that The Links is a substantial distance away. Even so, the building's undue prominence is still appreciable within the setting of the CA and The Links. The appellant's suggested alterations to the design to include obscure glazing would not overcome the harm in respect of the perception of scale and inappropriate window frame materials incorporated.
10. Given the design and position of the building relative to The Links and the level to which the building can be appreciated within the wider context of the CA, the harm to the setting of heritage assets is less than substantial. In accordance with Paragraph 196 of the National Planning Policy Framework (the Framework), less than substantial harm should be weighed against the public benefits of the development. The only benefit is the additional accommodation provided for the appellant and there is no wider public benefit. I must attach great weight to the need to conserve the CA and the setting of The Links and

the less than substantial harm identified clearly outweighs any public benefits in this instance.

11. For the foregoing reasons, the development would not preserve or enhance the setting of heritage assets. Consequently, in that regard, the development is contrary to saved Policies GEN2 (Design), ENV1 (Design of Development within Conservation Areas) and ENV2 (Development affecting Listed Buildings) of the Uttlesford Local Plan (2005) and the requirements of the Framework.

Flood risk

12. The appellant's Flood Risk Assessment (FRA) includes an Environment Agency flood map showing that the majority of the curtilage serving The Conifers sits within Flood Zone 1 but that the area close to the location of the building is situated next to or within Flood Zone 2, adjacent to the existing dwelling and Flood Zone 3 next to the Wicken Water watercourse. The site is therefore situated within or adjacent to land at medium to high probability of flooding. Buildings for dwelling houses are defined as a 'more vulnerable use' in the 'Flood risk vulnerability classification' in the Planning Practice Guidance (PPG) and as an ancillary building to The Conifers the development falls to be assessed under this classification.
13. The Framework makes it clear that the overall aim is to avoid inappropriate development in areas at risk of flooding by directing it away from areas at highest risk but, where development is necessary, making it safe without increasing flood risk elsewhere. In terms of steering new development to areas with the lowest probability of flooding, the Framework and PPG provide advice on when the Sequential Test is required and confirms that it does not need to be applied to minor development such as the householder development subject of this appeal.
14. For the purpose of decision making, the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise. Saved Policy GEN3 (Flood Protection) of the ULP (2005) states that for all areas where development will be exposed to or may lead to an increase in the risk of flooding, applications will be accompanied by a full FRA which sets out the level of risk associated with the development and show that the development can be provided with the appropriate minimum standard of protection throughout its lifetime, demonstrating the effectiveness of flood mitigation measures proposed.
15. I note the latest comments of the Environment Agency in respect of the flood risk and modelling information provided with the application and several ongoing areas of discussion including the model review, FRA review and the impact of the potential impact of the proposal on the stability of the bank with possible implications for the adjacent watercourse. I am also mindful of the third-party comments raising concerns in respect of the stability of the bank to Wicken Water and the potential impact of the development on flood risk to neighbouring properties. Given I have no evidence before me to demonstrate that these matters have been resolved to the satisfaction of the Environment Agency, I do not have the assurances required to conclude that the development has an acceptable impact in respect of the potential for flood risk for the users of the development nor that flood risk would not be increased elsewhere.

16. The appellant contends that the requirement for an FRA was ultra vires as this was not a condition of the original approval for a smaller outbuilding. Nevertheless, given the proposals proximity to the watercourse and within Flood Zone 3, it is within the interests of the appellant to ensure the building is designed to mitigate any potential for flood risk and there is a development plan policy requirement for an FRA. I must consider the proposal and evidence before me which is for a larger building for which flood risk information has been submitted and to which the Environment Agency have raised specific concerns. The previous planning permission does not override the need to appropriately address the potential impact of a larger building in an area at medium to high probability of flooding.
17. For the reasons set out, it has not been demonstrated that the development does not increase flood risk for users of the development or elsewhere or that it can be appropriately mitigated as required by Saved Policy GEN3 (Flood Protection) of the ULP (2005) which amongst other things states that within areas of flood risk development will normally be permitted where the conclusions of a flood risk assessment demonstrate an adequate standard of flood protection and that there is no increased risk of flooding elsewhere.

Other Matters

18. The appellant contends that the Council has been inconsistent in its decision making. It is also alleged that the application subject of this appeal was determined prematurely following previous advice that a decision would not be issued given ongoing dialogue between the Environment Agency and the appellant. Matters relating to consistency and processing of the application are not for me to intervene on under an appeal made under s78 of the Act.
19. The appellant has confirmed that they are willing to enter in to a s106 Agreement to ensure the building remains ancillary. I have not been provided with a copy of such an agreement. However, this matter is unrelated to the main issues and does not override the harm I have identified.
20. Whether or not the appellant misunderstood their permitted development rights leading them to increase the scale and mass of the building following the previous planning permission for a smaller outbuilding has not had a bearing on my assessment of the building in its current form. Whilst I note the appellant has confirmed that they would consider any reasonable and proportionate change to the structure, I must consider the proposal before me. My conclusions do not prevent the appellant from discussing potential alterations with the Council.

Conclusion

21. For the above reasons the appeal is dismissed.

M Russell

INSPECTOR