

Appeal Decision

Site visit made on 26 July 2019

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2019

Appeal Ref: APP/Z1510/W/18/3212375

Land rear of 51-57 Newland Street, Witham CM8 2BD

- 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 McKinlay, Bascule Properties Ltd, against the decision of Braintree District Council.
 - The application Ref 17/02256/FUL, dated 17 December 2017, was refused by notice dated 26 June 2018.
 - The development proposed is the erection of 6 x 1 bed dwellings within courtyard development and 1 flat over garage with associated parking to the rear patio area of the Spread Eagle Public House.
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Decision

1. The appeal is allowed and planning permission is granted for 6 x 1 bed dwellings within courtyard development and 1 flat over garage with associated parking to the rear patio area of the Spread Eagle Public House at Land rear of 51-57 Newland Street, Witham CM8 2BD in accordance with the terms of the application, Ref 17/02256/FUL, dated 17 December 2017, and the plans submitted with it, subject to the conditions in the schedule at the end of this decision.

Procedural Matter

2. The Council has prepared a draft Local Plan which has been submitted for examination. However, as this may be subject to changes, this limits the weight I can give to its policies.

Application for Costs

3. An application for costs was made by Mr Peter McKinlay, Bascule Properties Ltd against Braintree District Council. This application is the subject of a separate decision.

Main Issue

4. The main issue is whether the proposed development would provide acceptable living conditions for future occupiers.

Reasons

Units 1, 2 and 3

5. The proximity of the back yard walls of these units would reduce the daylight entering their kitchens. However, the kitchens are not deep and the stairs land
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close to the window wall. With the rooflights serving the first floors, there would be sufficient daylight within these units.

6. The second aspect of these units, onto a north-facing yard wall is not ideal. However, the spaces opening onto the north would be small kitchens and stairways, where outlook is less critical. The principal aspect of these units would be relatively open, and to the south-east, which would balance the second aspect. Most would have scarce private garden space, though I note that the Essex Design Guide 2018 offers flexibility as regards minimum garden size where residents have access to communal garden space for children's play and sitting-out, as in this proposal.
7. The windows of the bedrooms in units 2 and 3 would be through rooflights which would limit their outlook, and the floor areas of units 1 and 2 would be 4m² and 1m² short of the national standard¹. These shortcomings count against the scheme. However, against them I take into account that these units are independently accessed, 1-bedroom houses with a front garden and a back yard, approached through a secluded, courtyard garden, with private parking close-by. Given these positive aspects of the design, and in particular the urban infill nature of the development and its town centre location, I find that overall, the future occupiers of these units would have a high standard of living conditions.

Units 4 ,5, 6 and 7

8. The second aspect of units 4, 5 and 6 would be limited by the size of the openings. However, given the size of their back gardens and the good outlook from the main aspect, to the south-west, I find no harm to future occupiers' amenities. Some of the bathroom and stair windows may be small and lack outlook. However, given their use, I see no compulsion for them to provide any outlook at all, especially given that in the built-up area bathroom windows are commonly obscure-glazed for privacy. If, in an urban infill location like this they are openable and provide some daylight and ventilation, then this is a positive feature of the design, not a shortcoming.
9. The outlook from flat 7 would be onto the parking and manoeuvring areas. However, being at first floor it would be open and with an alternative aspect from the south-west to the south-east through an inset balcony. I find no harm in terms of outlook, as distinct from view. It is scheduled as a 1-bed, 1-person flat, with a floor area superior to the national space standard.

Noise

10. The more noise sensitive rooms of the houses and the gardens would be concentrated away from the public house side of the site. I accept that there may be noise from the public house customers' cars manoeuvring, as well as from the beer garden in summer time. However, given the separation and distance of the beer garden from the houses, the intervening walls between the houses and the parking area, and the typical hours of use of a public house, any noise would be unlikely to disturb the future occupiers of this development.

¹ National space standard, DCLG 2015

Parking

11. As well as parking space for customers of the public house, the development would provide each dwelling with 1 car space. It would provide 1 parking space for visitors instead of the 2 spaces sought by the Council's parking standards but would otherwise meet the quantitative standards. Given its town centre location and access to public transport the shortfall of 1 visitor space does not warrant the dismissal of the appeal.
12. While the single parking space in the undercroft might not meet the dimensions of garage parking, being unenclosed it would be unlikely to face a similar demand for storage as houses with on-plot garage parking. The parking spaces would be a few metres from the dwellings, but the distance would not be so far as to limit their accessibility.
13. Given the limited number of parking spaces and the low number of trips generated by the future occupiers, vehicle movements would not be high. There is no substantive evidence of conflict between cars and people within the development or with neighbours. I note that there are no objections from County Highways.

Security

14. The yard presently appears disused and dilapidated. The proposed development would introduce a legible hierarchy of spaces and active uses with far more natural surveillance. The new dwellings would be sufficiently separated from the public house parking and its garden not to present a risk of conflict. The backs of the buildings on the lane entering the site, together with the occupiers of the houses and the public house customers would provide sufficient natural surveillance of the semi-private areas and the 3 parking spaces on the lane entering the site to reduce the risk and fear of crime to acceptable levels.

Conclusion on living conditions

15. I find that while the scheme may not meet every single measure of amenity, what it lacks in one criterion it makes up for in another. Overall, given that it is for redevelopment between existing buildings in the centre of Witham with good access to public transport, a fair balance has been struck so that the future occupiers would have the high standard of layout and amenity and off-street parking sought by policies RLP3, RLP56 and RLP90 of the Braintree District Local Plan Review 2005 and paragraph 127(f) of the National Planning Policy Framework (the Framework).

Other Matters

16. Given the separation of the new units from surrounding dwellings, their height, and the very limited number and size of openings at first floor, I can see no harm from overlooking or overshadowing of the rooms or gardens of surrounding occupiers. Any impact on their outlook, because of the relatively low height of the new buildings, would not be harmful. I have not been able to identify any conflict with the living conditions of surrounding occupiers, though even if I had, there is a degree of toleration in town centres between neighbouring uses where some mutual compromise is generally accepted.

17. I have noted the appeal decision referred to by the Council but without the full details of the proposals in that case I cannot draw a parallel to the outlook conditions in this proposal. In any event, I have determined this case on its own merits.
18. The Council has granted listed building consent for the demolition of a curtilage listed building, and associated works. Historic England considered the new buildings in the planning application the subject of this appeal would be contextually appropriate and would not harm the setting of the listed buildings which back onto the site and which include the grade II* listed C16 Spread Eagle Hotel, or the character or appearance of the Witham Town Centre Newland Street Conservation Area (CA). The Council's Historic Buildings Consultant found no harm in terms of the heritage impacts of this proposal.
19. While the Council does not object to the proposal in terms of the impact on the setting of listed buildings or the CA, I have nevertheless undertaken my statutory duty pursuant to sections 66(1) and 72(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of the listed buildings and preserving or enhancing the character or appearance of the CA.
20. The development of the space behind the public house would appear to repeat the model of historical backland development in this Medieval planned settlement. Building heights and footprints would be sensitive to the setting of the public house, borrowing materials and detailing of the local vernacular, while its layout, forms and landscaping would tie it to its hierarchical position as a collection of discreet background buildings, clearly second place to the listed buildings. I consider that the setting of the listed buildings and the character and appearance of the CA would be preserved. There would be no conflict with policy CS9 of the Braintree Local Development Framework Core Strategy 2011 which seeks to protect and enhance the historic environment.
21. Since the planning application was determined, the Council considers it now has more than 5 years supply of deliverable housing sites, a position which the appellant does not challenge. The tilted balance in paragraph 11d of the Framework is not therefore engaged. Notwithstanding this, I have found that the proposed development would provide a high standard of living conditions for future occupiers and no conflict with the development plan, as a whole. Paragraph 11c of the Framework indicates that development which accords with an up-to-date development plan should be approved without delay.

Conditions

22. I have considered the conditions suggested by the Council against the advice in the Planning Practice Guidance and adjusted their wording and timing to reduce the burden of unnecessary submissions and processing of further applications where sufficient information has already been provided or is covered by other conditions. In addition to the statutory time condition (1), a condition listing the approved drawings (2) is needed to ensure clarity on what has been permitted.
23. A precautionary condition for archaeological work (3) is necessary given the archaeological interest of the site and its medieval origins. Similarly, given the time elapsed since the original survey, a condition for a bat survey (4) is required before demolition, to mitigate the risk of harm to this protected

species. Areas for construction traffic to deliver and manoeuvre (5) within the site are necessary given the site location in the town centre. To be effective, these conditions need to be resolved before development or demolition commences.

24. To protect the character and appearance of the area and the setting of the listed buildings, conditions for design details (6), including for bin storage (11) and for building materials (7), as well as a scheme for hard and soft landscaping (8) and repairs of the existing wall (10) are necessary. A condition for the provision and retention of the parking spaces and manoeuvring area (9) is required to avoid danger to road users and occupiers from uncontrolled parking. Piling in such proximity to surrounding occupiers may affect their living conditions, hence the necessity for a condition to protect them in the event of this foundation being provided (12). The suggested condition for a travel pack is not sufficiently precise on what it must contain and there is no evidence of its necessity for future occupiers to understand or to use sustainable transport, so I have not included it.

Conclusion

25. I have found that the proposed development would provide acceptable living conditions for future occupiers. As well as the social and economic benefits of the additional dwellings, the development would be sympathetic to local character and history and it would establish a strong sense of place and make an attractive, welcoming and distinctive place to live. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Patrick Whelan

INSPECTOR

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 drawings:

E001	Location Plan
E002	Existing Site Plan
P001	Proposed Site Plan
P100B	Proposed Ground Floor Site Plan
P101B	Proposed First Floor Plan
P102A	Proposed Roof Plan
P200B	Proposed Elevations
P201B	Proposed Elevations 01
P202A	Proposed Elevations 02
- 3) No development or preliminary groundworks of any kind shall take place until a programme of archaeological trial trenching and paleoenvironmental investigation has been secured and undertaken in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. A mitigation strategy detailing the excavation / preservation strategy shall be submitted to the local planning authority following the completion of this work. No development or preliminary groundworks can commence on those areas containing archaeological deposits or palaeoenvironmental deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the local planning authority. The applicant will submit to the local planning authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.
- 4) No demolition or development shall take place until a survey of the existing building to be demolished has been carried out by a suitably qualified and experienced ecologist no more than 60 days prior to demolition to investigate the potential presence of bats as specified in the Bat Survey prepared by John Dobson dated April 2018. Details of the methodology, findings and conclusions of the survey shall be submitted to the local planning authority for approval prior to demolition or the commencement of development. Should the results of the survey indicate that protected species are present within the application site, then details of the following shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development:-
 - (a) A scheme of mitigation/compensation works, including a method statement, to minimise the adverse effects of the development on protected species;
 - (b) A scheme of translocation to be submitted if necessary;
 - (c) A programme of timings for the works referred to in (a) above.Mitigation/compensation works shall be carried out in accordance with the scheme and programme approved in accordance with the above.

- 5) Prior to the commencement of development, areas within the curtilage of the site for the purpose of loading/unloading/reception and storage of building materials and manoeuvring of all vehicles, including construction traffic, shall be provided, clear of the highway.
- 6) No development above ground shall commence until drawings that show details of proposed windows, doors, eaves, verges and cills by section and elevation at scales between 1:20 and 1:1, as appropriate, have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details which shall be permanently maintained as such.
- 7) No development above ground shall commence until a schedule and samples of the materials to be used on the external finishes of the proposed dwellings and reconstructed boundary wall have been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved schedule and samples.
- 8) Prior to the occupation of the development, a scheme of landscaping works shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of:
 - a) hard surfacing materials;
 - b) walls and fences, gates, furniture, play equipment, signs and external letter boxes;
 - c) external lighting;
 - d) planting plans (including tree planting) and written specifications (including tree pit details and cultivation);

The hard landscaping works shall be carried out in accordance with the approved scheme of landscaping works before the occupation of the development. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance which shall be submitted and approved in writing by the local planning authority prior to first occupation of the development.

All planting, seeding or turfing comprised in the approved details of landscaping 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.

- 9) Prior to the occupation of the development, the vehicle access and vehicle parking areas indicated on the approved plans shall have been provided and surfaced in accordance with the approved drawings. The parking and turning spaces shall be kept available for the parking of motor vehicles and turning at all times. They shall be used solely for the benefit of the occupants of the development and their visitors and for the parking of vehicles which are related to the use of the development and for no other purpose and permanently retained as such thereafter.
- 10) Prior to the occupation of the development a schedule of works for the repair and restoration of the historic wall shall have been submitted to and approved

in writing by the local planning authority. The wall shall be repaired and restored in accordance with the approved schedule of works.

- 11) Prior to the occupation of the development, details of the location and design of refuse bins, recycling materials storage areas and collection points shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details and thereafter maintained.
- 12) No piling shall be undertaken on the site in connection with the construction of the development until a system of piling and resultant noise and vibration levels has been submitted to and agreed in writing by the local planning authority and shall be adhered to throughout the construction process.

END OF SCHEDULE OF CONDITIONS