
Appeal Decision

Site visit made on 18 September 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/J1860/W/19/3230413

Land to Rear of 18 Cross Street, Tenbury Wells, Worcestershire WR15 8EE

- 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 CJN Insurance Service Ltd against the decision of Malvern Hills District Council.
 - The application Ref 18/01372/FUL dated 17 September 2018 was refused by notice dated 2 April 2019.
 - The development proposed is residential development comprising 5 two bedroomed dwellings forming a row of terraced dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (i) Whether the proposal would preserve or enhance the character and appearance of the Tenbury Wells Conservation Area (the Conservation Area) and listed buildings;
 - (ii) the effect of the proposal on the living conditions of existing occupiers with regard to loss of sunlight; and
 - (iii) the effect of the proposal on the living conditions of future occupiers with regard to outdoor amenity space.

Reasons

Conservation Area and Listed Buildings

3. The appeal site is within the Conservation Area and to the rear of Cross Street where Nos 22-26 form a terrace of Grade II listed buildings. Access to the appeal site would be from the west off St Marys Close which is outside the Conservation Area and is made up of largely detached modern bungalows which are of a contrasting style to the traditional dwellings on Cross Street.
4. A previous appeal decision for single storey detached dwellings with regard to the same appeal site was dismissed on the 31 July 2017.¹ That Inspector described the Conservation Area as "being renowned for its united and

¹ APP/J1860/W/17/3172245

cohesive townscape formed of medieval street patterns and continuous building frontages which create a dense urban character. This form of development together with buildings being mostly two storeys is prevalent throughout much of the Conservation Area.” Although to the rear of Cross Street, I agree that the appeal site occupies a notable position within the Conservation Area and therefore is of significance to the character and appearance of the Conservation Area overall.

5. I therefore have a duty to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area and preserving the listed buildings or their setting in accordance with the statutory duty under section 72(1) and section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 respectively. Paragraph 193 of the National Planning Policy Framework (the Framework), together with policy SWDP24 of the Development Plan also requires the impact of a proposed development to be considered and great weight should be given to the asset’s conservation (in this case the Conservation Area) irrespective of whether any potential harm amounts to substantial harm, total loss of or less than substantial harm to its significance.
6. The appeal site was previously used as rear service yards and parking for retail premises in Cross Street although at the time of my site visit, some cars were parked on the appeal site. The appeal proposal has sought to address the concerns of the previous Inspector and proposes a terrace of five two bedroomed dwellings. The block of terraces would be towards the middle of the appeal site with front and rear garden space as well as side gardens in the case of Plots 1 and 5. Parking spaces would be to the front of four dwellings and to the side of Plot 1 as well as a total of 9 parking spaces to the side of the built development.
7. The proposed layout creates what the Council describes as a floating detached terrace. Although reference is made to possible cartographic evidence that Cross Street was lined with burgage plots from the medieval settlement, the Council accepts that the plots have been amalgamated into larger plots than originally laid out. Although the Council refers to other backland development on Cross Street being located on the back wall of a boundary wall, limited evidence is before me of where such later backland development has been built. Nevertheless, I do find the proposed layout with the various elements of garden to the rear, front and side, parking to the front and to the side to be fragmented and out of keeping with the traditional character of the Conservation Area.
8. The design of the proposed dwellings does not reflect the more traditional features seen in the surrounding street scene such as Cross Street and Westfield Terrace which is to the northern boundary of the appeal site. On the front elevation, there would be two dormer windows of differing sizes at first floor level on all five dwellings. There would be two or three more windows at ground floor level with a porch feature over the front doors. I agree with the Council that the design is busy in terms of its features. Three of the dwellings on Westfield Terrace appear to be replacement dwellings and have modest simple window styles. Dormer windows are to be found on nearby dwellings on Market Street but they are less dominant and more in keeping with the Conservation Area. The Council also refers to the lack of historic detailing and

- has suggested the use of arched heads to external openings and good quality cills.
9. The combination of the fragmented layout together with the modern design particularly the number and style of windows would in my view detract from the character of the Conservation Area and would therefore fail to enhance or preserve the character of the Conservation Area.
 10. However, the position of the appeal site to the rear of Cross Street with limited views of it would mean that any adverse effects of the development would be limited to the character of the Conservation Area. The harm to the significance of the CA as a heritage asset would therefore be less than substantial. Paragraph 196 of the National Planning Policy Framework (the Framework) states that where a proposed development would lead to less than substantial harm to the significance of a designated heritage asset (such as a conservation area), this harm should be weighed against the public benefits of the proposal.
 11. The development would make use of a largely vacant site. There would be modest benefits to local housing supply with the provision of five houses and limited economic benefits from construction. However, I find that the harm to the Conservation Area would clearly outweigh any public benefits of the proposal.
 12. It would therefore be contrary to SWDP21 (Design) which, amongst other things, refers to permitting development where the layout and design respect the character and quality of the area. It would also be contrary to SWDP24 (Management of the Historic Environment) and policies SWDP6 (Historic Environment) of the Development Plan which collectively seek to conserve and enhance heritage assets and their settings and paragraphs 193 and 196 of the Framework. I find Paragraph 185 of the Framework to be less relevant as it relates to plan making rather than decision taking.
 13. The previous decision found that the development would be some distance from the listed buildings and with the low height of the dwellings proposed there would be no interference with their setting. The Council considers that although two storey dwellings are now proposed given the distance from the listed buildings, the appeal proposal would not affect the setting of the listed buildings which are and I concur with that view.

Living conditions of existing occupiers

14. Gardens of the appeal proposal would be to the other side of the terrace block on Westfield Terrace and Nos 5 and 6 Westfield Terrace are at the end of the terrace block. The Council refers to "loss of sunlight during the afternoon and evening hours to the rear elevation of these properties given that this property contains windows at ground and first floor level". No 5 Westfield Terrace has windows on the side end elevation overlooking a garden area and to the front but there are no windows on the first section of the rear elevation of Westfield Terrace. The next section of rear elevation has a single very modest obscure glazed window at first floor level.
15. To the east of the single window, there are three rectangular windows that are towards the top of the ground floor and there are three rooflights on this section of roof. Taking into account, the position and size of the existing windows that are on the rear elevation of Westfield Terrace at Nos 5 and 6 and

their relationship to the appeal dwellings, I do not find that there would be harm to the living conditions of existing occupiers of Nos 5 and 6 with regard to loss of sunlight.

16. The appeal proposal would therefore not be contrary to Policy SWDP21B iv. which refers to neighbouring amenity and amongst other things, states that development should provide an adequate level of sunlight. It would also comply with Paragraph 127 of the Framework which refers to a high standard of amenity for existing users.

Living conditions of future occupiers

17. In March 2018, the Council adopted the South Worcestershire Design Guide Supplementary Planning Document Overarching Design Principles (the Design Guide) which includes provision of private garden spaces. The Guide refers to 20 metres per bedroom and defines a bedroom as including study/hobby rooms at first floor levels. Design B which is proposed for Plot Numbers 3, 4 and 5 has 2 bedrooms but would also have a third room on the first floor and the Council has taken the "st" marked on the plans to mean study although the appellant indicates in correspondence that the "st" meant storage. However, I do not think it is unreasonable in view of the upstairs location and size to consider the third upstairs room as a study or storage space to be included in the overall calculation for an appropriate level of garden space. Paragraph 5.7 of the Design Guide deals with the provision of outdoor space for new development and states that the type and level of provision will vary according to the characteristics of the development, the site and context. Nevertheless, 20 square metres per bedroom is a useful tool to assess garden size.
18. Plot 5 does have around 59 square metres of garden space if the side enclosed area is included in the calculation making it one square metre short of the recommended 60 square metres. Plots 3 and 4 with potentially 3 bedrooms have around 41 square metres of private garden space. Whilst one area of private useable garden space is proposed for each dwelling, I do consider on balance that the amount of private garden space for Plots 3 and 4 particularly with gardens either side and existing built development close to the rear boundary would be insufficient. I do therefore find that the appeal proposal would harm the living conditions of future occupiers of Plots 3 and 4 with regard to the provision of outdoor amenity space.
19. I do find the appeal proposal to be in breach of Paragraph 127 of the Framework which refers to the amenity of future occupiers. It would also fail to comply with the Design Guide with regard to the provision of outdoor amenity space.

Other matters

20. Whilst the Tenbury Town Council welcomes development on the appeal site, any proposed development has to be assessed in accordance with the relevant policies having particular regard to the Conservation Area.
21. I have no doubt that the appellant has from the pre-application stage sought to work with the Council to reach agreement to achieve a suitable proposal for the appeal site. Nevertheless, I do have to assess the appeal proposal on the evidence before me.

Conclusion

22. I have not found harm to the living conditions of existing occupiers with regard to loss of sunlight. However, I have found harm to the living conditions of future occupiers of Plots 3 and 4 with regard to insufficient amenity space. I have also found that the appeal proposal would neither preserve or enhance the character and appearance of the Conservation Area. For the reasons given above, I conclude that the development would be contrary to the development plan and the Framework and therefore the appeal is dismissed.

E. Griffin

INSPECTOR