
Appeal Decision

Site visit made on 28 August 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2020

Appeal Ref: APP/X2410/W/19/3230980

Land adjacent to Granite Way, Mountsorrel LE12 7TZ

- 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 Mandeep Singh on behalf of G S Developments (Leicester) Limited against the decision of Charnwood Borough Council.
 - The application Ref P/18/1379/2, dated 25 June 2018, was refused by notice dated 08 March 2019.
 - The development proposed is: Erection of three/four storey apartment block of 25 units with associated car parking, landscaping and alterations to existing vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of three/four storey apartment block of 25 units with associated car parking, landscaping and alterations to existing vehicular access at land adjacent to Granite Way, Mountsorrel LE12 7TZ, in accordance with the terms of the application, Ref P/18/1379/2, dated 25 June 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are the effect of the proposal on: the character and appearance of the area; and the living conditions of the occupiers of a residential property, No 1 Betty Hensers Lane with particular reference to privacy, outlook and sunlight.

Reasons

The character and appearance of the area

3. The proposal would be sited on a vacant site adjacent to a supermarket and roundabout, at the point where Leicester Road meets Loughborough Road, leading into Mountsorrel.
4. The character of the area is mixed, with commercial development on the opposite side of the roundabout, and mainly residential development on the side of Loughborough Road facing the site. Also fronting onto Loughborough Road is a single storey red brick non residential building. On the corner of the lane and Loughborough Road is a 2 storey property with hot food takeaway use at street level and what appears to be residential a use at first floor. To the rear of that property, fronting on to the lane, is a bungalow with roof dormers, no 1 Betty Hensers Lane. The lane continues past the bungalow into open countryside, and a public footpath leads through to a large supermarket

- building with a high pitched roof with grey coloured tiles, which borders the rear of the appeal site. To the front of the site there are a number of semi mature trees.
5. The proposal is for a development of 25 flats, arranged in 2 linked blocks. The block closest to the roundabout on Granite Way would be 4 storeys in height, including ground level parking, and would also face onto Loughborough Road. At the end of the site furthest from the roundabout there would be a 3 storey block, again including ground floor level parking. This part of the development would also have its main frontage facing Loughborough Road and a side elevation facing a short road, Betty Hensers Lane (the lane). Vehicular access would be gained via the lane, which would be improved to an adoptable standard.
 6. On my site visit I looked at the wider area, and there are buildings on Loughborough Road of an architectural style and scale which would be reflected in the design of the proposal, at least in terms of the neo Georgian themes. These include the 3 storey, pedimented buildings on Loughborough Road close to the junction with Pepper's Close, the 3 storey dwelling at the junction Crown Lane, and the fine Listed Building at the junction with Sibley Road. These buildings do not define the local vernacular, but rather create interest through the introduction of the Georgian style and a variation in scale. They provide some design references for the proposal.
 7. It has been suggested that the density of the development would be out of character with the area. Given that the proposed form of development is flats, and many of the properties nearby are houses, it is inevitable that a significantly higher density would result than were the site to be developed as houses. That does not alone mean that a development would be out of character with its surroundings, and I do not find that the density of development would cause any harm.
 8. The scale and massing of the proposal would respond to the shape and levels of the site. At the prominent corner at the roundabout, the 4 storey part of the proposal would have a vertical emphasis appropriate to its location at a main entrance to the village. The 'cranked' layout would then enable a transition to the 3 storey element adjacent to Loughborough Road and the lane. In terms of scale, the use of flat roofs and the fenestration¹ would help to assimilate the proposal within the lower scale surroundings. In this context the proposal would be the most prominent building in the area but would not appear overdominant or out of scale with the surroundings.
 9. The Council has raised the proposed provision of bins and recycling facilities, which it states would be inadequate as a contributory factor to the effect on character and appearance. However, in its statement it concedes that the matter could be dealt with via a planning condition and I agree that there is scope within the design to arrive at more appropriate arrangements for waste storage which could be secured via condition.
 10. It has been suggested that the proposal should have been subject to independent design review. Core Strategy Policy CS2 does state that such reviews will be undertaken for major or sensitive developments to determine

¹ Although the blocks are 3 and 4 storey, the ground floor is parking without the full height window openings of the upper storeys.

the quality of new development. This is a matter of judgement for the local planning authority, and it appears that in this case it did not decide the proposal required such an independent review.

11. I therefore conclude on this main issue that the proposal would not harm the character or appearance of the area, and would comply with Policies CS2 of the Charnwood Local Plan Core Strategy 2011 to 2028² (Core Strategy) and Saved Policy EV/1 of the Charnwood Local Plan 1991 -2006³ (Local Plan) which require, amongst other things, that development should respect and enhance the character and appearance of the area in terms of scale, massing, height, layout and materials. It would also comply with the Council's Leading in Design Supplementary Planning Document⁴ (the SPD) which seeks to ensure high quality development and support the aims of the National Planning Policy Framework (the Framework) which promotes high quality in design.

Living conditions

12. The 3 storey element of the proposal would be close to the existing dwellings in the lane, specifically the proximity of the side elevation of flats 7 and 8 at first floor and 18 and 19 at second floor to the lane. In the case of flats 8 and 19, there are no proposed habitable room windows facing onto the lane. Within flats 7 and 18, two windows would face onto the lane in each flat, one serving a bedroom, the other a secondary window to the main living area.
13. No 1 Betty Henser's Lane (no 1) contains number of windows in the front elevation, including 2 first floor dormer windows in the front roof slope and one in the side facing roof and 3 ground floor windows.
14. The Council's SPD guidance recommends privacy distances between habitable room windows, which are defined as rooms primarily occupied during the day i.e. living rooms, dining rooms and kitchens but excluding bedroom. The distances specified strictly apply only to rear facing elevations, which would not be the case in terms of the relationship between the proposal and no 1. However, given that no 1 is an existing property and that the proposal is for flats and not individual dwellinghouses, I consider that the SPD privacy distances are relevant.
15. The Council suggests that a distance of 15.5m should be maintained from the ground floor windows in no 1 and the side elevation of the proposal. The planning office report suggested a distance of 12.5m, whilst also stating that a separation distance of 21m should exist between habitable rooms.
16. The parties do not agree on the 'elevation to elevation' distance between no 1 and the proposal, the Council stating that this would be 9m; the appellant 15m. The planning officer report agrees with the appellant⁵. The parties do not provide me with a figure for the proposed distance between the nearest bedroom windows in flats 7 and 18 and the windows in no 1. However, this must be more than the 15m 'elevations distance' but appears significantly less than the 21m suggested in the guidance. From the plans, I estimate the distance to be in the region of 18m. The side facing living room windows would

² Adopted November 2015

³ Adopted January 2004

⁴ Appendix 4, Charnwood Development Framework – Leading in Design Supplementary Planning Document 2005

⁵ The first paragraph on page 12, states that the distance is 15m

be a greater distance from the windows in no 1 than the bedroom windows, although it is possible this would not be 21m.

17. Whilst the distances between the proposal and no 1 fall short of those recommended in the Council's guidance, the windows do not directly face no 1, but are at an oblique angle which would significantly reduce the potential loss of privacy. Taking these matters together, and informed by my observations on site, I am satisfied that the proposal would not harm the living conditions of the occupier of no 1 due to loss of privacy.
18. I have also considered whether the scale and massing of the development would over dominate no 1, or cause significant loss of outlook or sunlight. Although the side wall of the proposal would be significantly higher than the bungalow, it would be separated by a distance of approximately 15m, slightly below the 15.5m distance sought in the SPD guidance. However, it would directly face only part of the front elevation of the bungalow and a significant proportion of the front facing aspect of the bungalow would remain open, looking out onto the proposed entrance and parking area of the proposal.
19. The Council suggests in its statement that the proposal would result in the overshadowing of no 1 in the afternoon. However, the Council does not produce any evidence to support the point. Given the spacing which would exist between the proposal and no 1, and the orientation, I am satisfied that significant overshadowing would not occur.
20. The Council has suggested that a planning condition should be attached to the permission requiring the living room windows in the proposal facing the lane to be obscured glazing and retained as such in the future. Given the intervening distances and oblique angle I do not consider that such measures are necessary in order to protect privacy. In the case of the bedrooms in the proposed flats, such glazing would prevent outlook from those rooms which would not provide satisfactory living conditions for future occupiers, a point accepted by the Council.
21. I therefore conclude on this main issue that the proposal, as a result of its scale and massing on the boundary with the lane, and the positioning of habitable room window openings, would not harm the living conditions of the occupiers of no 1 with regard to privacy, outlook and sunlight, and would therefore comply Policy CS2 of the Core Strategy and Policy EV/1 of the Local Plan which seek, amongst other things, to protect the living conditions of people who live nearby or in the proposed development, and ensure that development does not cause significant adverse effects on the residential amenity of adjoining properties. It would also comply with the SPD and the Framework which requires that new development should ensure that the living standards of existing occupiers are not compromised.

Other Matters

22. Interested parties have raised the issue of flooding and suggest that the proposal could add to previous problems in the area. The Local Lead Flood Authority was consulted on the application, and consider that with appropriate arrangements to deal with the control of surface water runoff from the site there is no objection. I propose to attach a condition relating to this matter in order to ensure that the development does not exacerbate these issues.
23. The access via the lane would be upgraded and I note that the highways authority had no objection to the proposal following the submission of amended plans. The number of parking spaces to be provided is based on 1 space per single bedroom unit and 2 spaces per 2 bed unit, 37 spaces in total, and a further 4 spaces for visitors within the site. Two on street spaces would be formed within the lane, for general use. The highways authority considers that this level of provision would be sufficient to cater for the parking demands of the proposal and I see no reason to take a different view.
24. The Council considered, were it to have approved the application, whether it would have sought a financial contribution regarding a number of infrastructure needs, in accordance with Core Strategy Policy 24. Most significant amongst these would relate to off-site open space. A viability assessment was submitted by the appellant at the time of the application. The Council has not made any representations in this appeal which alter the position as set out in the officer report that, in view of the viability assessment, a developer contribution towards impacts on local infrastructure is not appropriate.
25. The Council is satisfied that the proposed development would not yield a sufficient developer profit to support the provision of an element of affordable housing. The viability appraisal report supplied by the appellant also considers the effect this would have on the deliverability of the project and finds that such provision, either as part of the proposal or off-site via a financial contribution could not be supported and the development would not proceed were such a contribution to be required.
26. The Framework is clear that affordable housing should be sought in all major housing developments. The Framework also provides that the weight to be given to a viability assessment at the application stage is matter for the decision taker, having regard to all the circumstances of the case. Policy CS3 of the Core Strategy seeks to ensure that new development of 10 dwellings or more in Mountsorrel achieves 30% affordable provision. I am satisfied that the Council has given due and proper consideration to the viability appraisal, including seeking the advice of the District Valuer who accepts that the scheme cannot accept any contributions for infrastructure, including affordable housing. Having considered the viability report I see no reason for me to take a different approach to the Council in the matter.
27. It is not disputed that the Council presently has in excess of 5 years supply of housing land. Some interested parties suggest that this should weigh against the proposal in the sense that there is no need to develop the site. The Framework is clear that the Government's objective is to boost the supply of homes, as part of which sufficient land should come forward where it is needed. The appeal site is within an existing urban area, demonstrably available, and in the absence of strong arguments against the form of development proposed there is no good reason to frustrate the wish of a

developer to proceed with the provision of 25 dwellings. In addition other benefits would include the creating of employment during the construction phase, the contribution made by future occupiers of the dwellings, and the development of a currently vacant site contributing little to the character or appearance of the area. I therefore attach very limited weight to the argument that there no need to allow the development to proceed.

28. It has been suggested that the development would lead to noise and disturbance for local residents, in particular from the occupiers of the proposed flats driving into an out of Betty Henser Lane. At the present time the lane is a quiet cul de sac, and were the proposal to proceed the amount of traffic entering and leaving would increase significantly. The application was accompanied by a noise assessment, which primarily considered the possible effects of noise from the servicing area of the supermarket servicing area together with traffic noise from the main roads close to the site. The noise assessment proposes a mitigation strategy for the proposed flats. In this context, the local area is not one with low background noise levels and therefore do not find that there is good reason to conclude that additional traffic noise, or the general comings and goings from the number of flats proposed, would be harmful to the local area.

Conditions

29. I have considered the conditions suggested by the Council against the tests of the Framework and advice provided by the Planning Practice Guidance. I find the majority to be reasonable and necessary in the circumstances of this case; however some have been edited for consistency and clarity.
30. For certainty I attach the normal planning condition limiting the period of the consent to 3 years. Whilst the appellant may have no objection to the Council's suggested reduction to 1 year⁶, circumstances may arise which could delay commencement therefore I consider it prudent to retain a 3 year period. In order to prevent any doubt over what is approved I attach a condition requiring the development to be carried out in accordance with the approved plans.
31. In the interest of achieving a visually attractive development, I attach a condition requiring details of external materials to be approved. For the same reason I attach a condition requiring the details of windows to be agreed.
32. In the interests of the living conditions of the future occupiers of the development a condition is attached requiring the development to be carried out in accordance with the noise mitigation identified in the Noise Assessment.
33. In the interests of achieving a visually attractive development and biodiversity I attach a condition requiring a scheme for landscaping to be agreed, to include details of all boundary enclosures and outdoor seating.
34. In order to ensure that the development contributes towards biodiversity a condition is attached requiring detail to be approved of measures for ecological enhancement, including the SUDS features which may also assist in managing surface water runoff.
35. In order to ensure that acceptable provision is made for access to the site and the turning and parking of vehicles a condition is attached requiring the

⁶ The Council statement refers to 13 years which is clearly a typographical error

approved plans in relation to these matters to be completed before any dwellings are occupied. I also attach a condition requiring the provision of cycle storage, in order to meet the needs of residents and promote the use of non-car modes of transport, and a condition requiring the provision of facilities for waste storage, details of which are to be agreed.

36. To ensure that the development is provided with a satisfactory means of drainage and reduce the risk of creating or exacerbating any flooding problems in the local area, and to minimise the risk of pollution, a condition is attached requiring details of the arrangements for drainage to be approved. I also attach a condition requiring tests to be undertaken, to establish the feasibility of using infiltration as part of the means for draining the site. The Council has proposed 3 separate conditions relating to the management of surface water arising from the development⁷. In two cases I have consolidated these within the one proposed condition (no 11) and in the case of surface water during construction, that matter is covered in the condition requiring a construction/site traffic management plan to be approved.
37. The construction activities associated with the development will be in close proximity to residential properties. A condition is therefore attached requiring a construction management plan to be agreed with the Council.
38. In the interests of the health and safety of the future occupiers of the development a condition is attached requiring a gas verification plan to be approved by the Council prior to any development.

Conclusion

39. For the reasons given, the appeal is allowed.

Tim Wheeler

INSPECTOR

⁷ Council statement, proposed conditions 13,14 and 17

Schedule of Conditions

1. The development, hereby permitted, shall be begun not later than 3 years from the date of this permission.
2. The development shall be carried out only in accordance with the details and specifications included in the submitted application, as amended, as shown on the drawings below:

Site Location Plan, 40993-003B; Proposed Street Scene, 40993-010D; Proposed Ground Floor and First Floor Layouts, 40993-011D; Proposed Second and Third Floor Layouts, 40993-012C; Proposed Elevations scale 40993-013D; Proposed Elevations 2 40993-014C; Site Layout 40993-015D

Design Statement Rev A; Brick option visual 70993; Topographic Site Survey, 17098-17-01; Proposed Site access, GWM-BWB-GEN-XX-DR-TR-100 S2 REVP1; Arboricultural Survey and Constraints Plan 01; Noise Assessment ref. 23061/07-17/4899 Rev B by M-EC dated July 2018; Flood Risk Assessment Report Ref: 23061/07-18/5535 Rev A.

3. No materials shall be placed on the site until such time as samples of the facing bricks and any other materials to be used on the external walls including brick/stone banding and stone window cills/lintels, window frame materials and finishes, and any other materials have been submitted to and agreed in writing by the Local Planning Authority. Only the approved materials shall be used in carrying out the development.
4. No works above slab level shall begin until details, including section drawings, of the design, reveals, materials of construction and finish of all new window openings, have been submitted to and agreed in writing by the Local Planning Authority. The works shall thereafter be carried out only in accordance with the agreed details.
5. Within one month of the commencement of works on site, a plan showing a detailed soft and hard landscaping scheme, including the proposed benches and all boundary details, shall be submitted to and agreed in writing by the Local Planning Authority. The approved landscaping scheme shall be fully completed, in the first planting and seeding seasons following the first occupation of any part of the development or in accordance with a programme previously agreed in writing by the Local Planning Authority. Any trees or plants removed, dying, being severely damaged or becoming seriously diseased, within 5 years of planting shall be replaced in the following planting season by trees or plants of a size and species similar to those originally required to be planted.
6. The development hereby approved shall be carried out in strict accordance with the mitigation strategy specified within the submitted Noise Assessment (ref. 23061/07-17/4899 Rev B by M-EC dated July 2018) and shall be maintained in this form at all times thereafter.
7. No development shall commence on the site until such time as full details of a scheme of ecological enhancement of the site, as set out in the submitted Development Design Statement, including SuDS features, brown roof and swift boxes have been submitted to, and approved in writing by, the local planning authority, together with a maintenance plan for their long-term retention. The

- approved enhancements shall be carried out in accordance with the approved details and thereafter retained in accordance with the agreed maintenance plan.
8. No dwelling within the development shall be occupied until such time as the access arrangements and off-site works shown on application drawing number 40993/015D have been implemented in full, and the parking and turning facilities have been implemented in accordance with application drawing number 40993/011D. Thereafter the on-site parking provision shall be so maintained to serve the development at all future times.
 9. No dwelling within the development shall be occupied before secure cycle parking has been provided in accordance with details first submitted to and agreed in writing by the Local Planning Authority. Thereafter the cycle parking shall be maintained and kept available for use.
 10. No dwelling within the development shall be occupied before waste disposal and recycling facilities have been provided on the site. This shall only be in accordance with details which have been submitted to and approved in writing by the Local Planning Authority
 11. No development shall commence on the site until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
 12. No development shall commence on the site until such time as infiltration testing has been carried out to confirm (or otherwise) the suitability of the site for the use of infiltration as a drainage element, and the Flood Risk Assessment has been updated accordingly to reflect this in the drainage strategy.
 13. No development shall commence on the site until such time as a construction traffic/site traffic management plan, including wheel cleansing facilities and vehicle parking facilities, proposed hours of demolition/construction works and of deliveries and a timetable for their provision, and details in relation to the management of surface water on site during construction of the development, has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and timetable.
 14. No development shall commence on the site until such time as a Gas Verification Plan has been submitted to and approved in writing by the Local Planning Authority. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an amendment to the remediation strategy detailing how this unsuspected contamination shall be dealt with. Any approved amendment to the remediation strategy shall thereafter be implemented in full.

End of Schedule