



Appeal Decisions

Site visit made on 20 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 6 February 2020

Appeal A Ref: APP/Z1510/W/19/3239689

65 Newland Street, Witham CM8 1AB

- 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 Dyer MacKay Developments against the decision of Braintree District Council.
 - The application Ref 17/02065/FUL, dated 16 November 2017, was refused by notice dated 28 May 2019.
 - The development proposed is the demolition of a modern stairwell, change of use from office to residential use to provide a single, 2-bedroom dwelling, conversion of the rear extension and erection of a 2-storey extension to provide two 1-bedroom flats, formation of a courtyard to form amenity space and cycle parking.
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Appeal B Ref: APP/Z1510/Y/19/3239691

65 Newland Street, Witham CM8 1AB

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Dyer MacKay Developments against the decision of Braintree District Council.
 - The application Ref 17/02066/LBC, dated 16 November 2017, was refused by notice dated 28 May 2019.
 - The works proposed are the demolition of a modern stairwell, change of use from office to residential use to provide a single, 2-bedroom dwelling, conversion of the rear extension and erection of a 2-storey extension to provide two 1-bedroom flats, formation of a courtyard to form amenity space and cycle parking.
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Decisions

Appeal A Ref: APP/Z1510/W/19/3239689

1. The appeal is dismissed.

Appeal B Ref: APP/Z1510/Y/19/3239691

2. The appeal is allowed and listed building consent is granted for the demolition of a modern stairwell, change of use from office to residential use to provide a single, 2-bedroom dwelling, conversion of the rear extension and erection of a 2-storey extension to provide two 1-bedroom flats, formation of a courtyard to form amenity space and cycle parking, at 65 Newland Street, Witham CM8 1AB, in accordance with the terms of the application Ref 17/02066/LBC, dated 16 November 2017, and the plans submitted with it subject to the conditions in the schedule at the end of this decision.
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Preliminary Matters

3. As the proposal concerns a listed building in a conservation area, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. The Council has referred to policies in its draft Local Plan. Though this has been submitted for examination I am not advised of its progress, or whether there are any outstanding objections to its policies. This limits the weight I can accord those policies.
5. An application for costs was made by Dyer MacKay Developments against Braintree District Council. This application is the subject of a separate decision.

Main Issues

6. The main issues are whether the proposal would:
 - preserve the grade II listed building, and any of the features of special architectural or historic interest that it possesses;
 - preserve or enhance the character or appearance of the Witham Newland Street Conservation Area (CA): and,
 - provide acceptable living conditions for future occupiers.

Reasons

The listed building

7. This is an early C19 house in gault brick with timber, sliding-sash windows under a hipped, slate roof, extended in the late C20 and presently used as offices. It is listed for group value with neighbouring buildings fronting Newland Street. Its historic and architectural special interest is concentrated more in the C19 section than the flat-roofed extension and flat-roofed link to the large, modern building in the back yard. The back yard is enclosed by the backs of the buildings fronting Newland Street and the frontages of buildings set around what is now a car-park. The rear extensions obscure the C19 house visually from the yard and the spatial arrangement of the extensions has truncated its rear aspect. They mark a change in the fortune of the listed building and have therefore some historical interest, but they hold scant architectural interest in their own right and contribute very little to its overall significance.

The effect of the proposal on the listed building

8. The rear building line would extend around a metre to the rear and continue the flat roof form of the present extension. Though its façade of small openings would be similar to the character of the present arrangement, the additional footprint would make the effect of the flat roof, which form is insensitive to the C19 section, more pronounced. However, the footprint of the link building would be cut-back into the site, and most of its first floor would be removed, thereby reducing the prominence of that section.
9. These manipulations of volume and footprint are remote from the historic core of the building and would have very little bearing on its architectural significance. They amount to little more than an exchange of insignificant

volumes. However, the removal of the first floor of the link building would open-up the skyline behind the main building, though the proximity of the other building to which it is attached, which would remain, would diminish that positive effect. The proposal includes the removal of the signage on the front elevation and the replacement of the present, modern ground floor window which reflects little of the character of the building, with a more sensitive sliding sash. This would not harm the historic significance of the building but improve its appearance in the street.

10. The change of use from offices to residential may increase the intensity of use of the building. The C19 section would become isolated from the rear extensions to which it is presently linked. However, returning the C19 section to use as a house would not harm the significance of the building. Using the back for dwellings would have no more bearing on the significance of the building than the present use as offices. Given the disparity in the building forms and spatial arrangement presently between the front and the back, I can identify no harm to the effect of their disconnection on the significance of the building.
11. I conclude that the proposal would preserve the special architectural and historic interest of the grade II listed building. It would satisfy the requirements of the Act, as well as paragraph 192 of the National Planning Policy Framework. There would be no conflict with policies CS9 of the Core Strategy 2011 (CS) which seeks to protect and enhance the historic environment and policy RLP100 of the Local Plan Review 2005 (LPR) which permits the alteration and change of use of a listed building where this would not harm its setting, character or fabric, or diminish its historic or architectural importance.

The effect of the proposal on the CA

12. The CA is an important example of a medieval planned settlement, significant as much for the evidence of the historic infilling of the back yards, its outbuildings and cottages and its historic prosperity, as for the eloquent frontages of the buildings lining the historic road to London.
13. The changes to the building would be limited in extent, and for the reasons already given, would not harm the appearance of the CA. Instead, there are two elements of the proposal which would enhance its appearance, First, the removal of the signage and the replacement of the front window would restore the balanced, fine-grained texture of the C19 front elevation, and the rhythm of the openings in this section of the street. Second, the reduction in the piling of successive volumes at the back would restore some legibility to the building forms regressing into the yard and would thereby enhance the townscape of the CA in short distance views and longer distance glimpses.
14. As regards the change of use, there appears to be as much diversity in the use of the spaces above and behind the frontage buildings as there is differentiation in the townscape across them. Given the present and historical uses and activities in the CA, using the building for dwellings would not harm its character. Given the extent of built form already on site, and the pattern of development which includes buildings developed in the yards behind the frontage buildings many of which have been extended, the proposal is not out of character with its context, of an inappropriate density or an overdevelopment, avoiding conflict with LPR policies RLP3, RLP10 and RLP90.

15. The character of the CA would thus be preserved, and its appearance enhanced. This would satisfy the requirements of the Act, as well as paragraph 192 of the Framework. There would be no conflict with CS policy CS9, nor with policies RLP3, RLP10 and RLP 90 of the Local Plan Review 2005 (LPR) which protect the character of the settlement and which require development to be of a high standard of design and layout and have a density and massing related to the characteristics of the site.

The living conditions of future occupiers

16. The proposed house: The Council objects to the lack of amenity space and parking space, the single aspect of the house, and the lack of privacy and outlook from its windows, at the back edge of the busy footway of Newland Street.
17. The back of the site has already been built on, which reduces the opportunity for a garden, yard or terrace, parking and a dual aspect. The lack of an area of private garden and a parking space would be offset by the size of the house, superior in area to the National Space Standard, and its location in the heart of the town centre, close to its amenities and to public transport serving surrounding settlements and facilities. I note that the highways authority found the proposal acceptable.
18. The house would be single aspect, but it would have access to some afternoon sun, and with the large windows with low cills it would have a good outlook onto an attractive street. Though there would be little opportunity to escape the hustle and bustle of Newland Street, there are no significant noise sources drawn to my attention that could not be mitigated by secondary glazing. The rooms are deep, with the potential to prevent being overlooked by the installation of shutters or curtains, as commonly installed in houses fronting High Streets.
19. I acknowledge that returning the residential use of the C19 section of the building would have some drawbacks. There would be some conflict with LPR policies RLP3 and RLP56 which require development to satisfy amenity, environmental and highway criteria. However, given the location of the site and the significance of the listed building, I find that, on balance, the proposed house would provide acceptable living conditions for future occupiers.
20. The proposed flats: Though single aspect, the flats would have access to south and south-east light. Though their small, enclosed, shared courtyard would provide little more than a transition from the semi-private realm to the private space, given the constraints of the site and its central location, these shortcomings should be weighed in the balance. Given that the occupiers and visitors of only 2 dwellings would pass across it, there would be little risk of significant loss of privacy to the occupiers of the ground floor flat. There is no reason why the courtyard could not be a high quality space which would raise the overall living conditions of the occupiers of the flats, which would exceed the minimum floor area indicated in the National Space Standard. This could be secured by a landscaping condition and would mitigate to some degree the lack of private amenity space.
21. While there would be no parking spaces for the flats, as above, the town centre location of the site and its accessibility to facilities and services and public transport would mitigate this, particularly so as the size of each flat is

- 1-bedroom. I saw the air extraction unit on the neighbouring building, but it is sufficiently distant from the openings of the flats not to risk a significant loss of privacy to the occupiers of the proposed flats.
22. I can identify no shortcomings in terms of light and outlook from the ground floor flat, which would have large openings onto the courtyard. However, while the upper floor flat would have a large window serving its living and dining area, there would be no outlook from its bedroom. I appreciate that there would be a rooflight over the bedroom which would provide daylight, but this would not provide the occupiers with any connection to the environment around them, save the sky overhead. I have taken into account that the flat is surrounded by buildings and yard, nonetheless, an outlook through a window from a bedroom provides a connection to the outside world, important for the well-being of occupiers, reducing the risk of social isolation and by increasing natural surveillance over the back areas, reducing the opportunity for crime, and the fear of it.
23. With no outlook from the bedroom in the upper floor flat through a window, I am unable to conclude other than that the proposal would result in unacceptable living conditions for future occupiers. For this reason, the proposal would conflict with LPR policy RLP3.

Other Matters

24. I have had regard to the setting of the surrounding listed buildings. Because of the confined extent of the proposal, its distance from them, as well as the structures and oblique angles between them, their settings would be preserved in accordance with the expectations of the Act, and the requirements of the development plan, described above. Nor would there be any conflict in this regard with the objectives of the Framework which recognises the potential for harm to the significance of a designated heritage asset from development within its setting.

Planning Balance and Conclusions

25. I have found that the proposal would preserve the special architectural and historic interest of the grade II listed building, and that the character of the CA would be preserved, and its appearance enhanced. Notwithstanding my conclusions on heritage matters, I have found that the upper floor flat would provide unacceptable living conditions for future occupiers, placing the proposal, in this respect alone, in conflict with the development plan.
26. The appellant contests the Council's claimed housing land supply of 5.29 years, a claim which the Council has not rebutted. He refers me to numerous, recent appeal decisions in which it was concluded that the Council could not demonstrate a 5-year supply of deliverable housing sites, indicating a range of between 4.15 and 4.45 years.
27. Where a Council cannot demonstrate a 5-year supply, and where, such as in this case, the policies in the Framework protecting designated heritage assets do not provide a clear reason for refusing the proposal, then the presumption in favour of sustainable development applies. This means granting permission, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework, taken as a whole.

28. Even if I were to accept the appellant's position on housing supply, 3 additional dwellings would be a modest contribution against such a shortfall. I appreciate that this is a brownfield site in a sustainable location, and I acknowledge the social benefit an additional 3 dwellings would bring. The development would also bring improvements to the historic environment and economic benefits from construction work and the spending of future occupiers in the local economy. However, the unacceptable living conditions for future occupiers would be a serious and enduring adverse impact which would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework taken as a whole.
29. For the reasons given above, and having considered all matters raised, I conclude that the appeal against the refusal of listed building consent should be allowed, and that the appeal against the refusal of planning permission should be dismissed.

Listed Building Consent Conditions

30. In addition to the time condition, a condition to remove the sign fixed to the front wall of the building before occupation of the house and to make good any fixing is necessary to conserve the building from the risk of damage. I note the submitted drawing of the replacement window to the front elevation, however to ensure that the special architectural interest of the building is preserved, greater scale and detail is required, including the ironmongery, the pull mechanism and casing, internal reveal joinery, window board, sectional dimensions, glazing bar profiles, and glass seating. Given that the existing window is in place, there is no need for this to be resolved before the occupation of the house.

Patrick Whelan

INSPECTOR

Listed Building Consent Conditions (Appeal Ref: APP/Z1510/Y/19/3239691)

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) Before the occupation of the house, the signage and its fixings on the front elevation at ground floor level shall be removed and any fixing holes filled flush with non-cementitious mortar in a colour to match the brick or mortar surrounding each hole, or alternative compound approved in writing by the local planning authority.
- 3) Notwithstanding drawing 241-23 rev A No.65 NEWLAND STREET ENVELOPE DETAILS, before the occupation of the house, fully detailed drawings of the replacement window in the ground floor opening of the front elevation, including internal and external elevations, and incorporating visual references to the materials, ironmongery and detailing of the other windows in the front elevation, shall have been submitted to the local planning authority and approved in writing. The works shall be carried out in accordance with the approved drawings.

END OF SCHEDULE OF LISTED BUILDING CONSENT CONDITIONS