
Appeal Decision

Site visit made on 30 January 2020

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th February 2020

Appeal Ref: APP/Q3060/W/19/3238405

1 Clumber Lodge, Maxtoke Road, Nottingham NG7 1EG

- 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 James Lawer against the decision of City of Nottingham Council.
 - The application Ref 19/00369/PFUL3, dated 18 February 2019, was refused by notice dated 16 April 2019.
 - The development proposed is the removal of existing outbuildings and the erection of a single dwelling and provision of access aperture in boundary wall.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the appeal the Council adopted its Planning Policies Development Plan Document Local Plan Part 2 2020 (the DPD) which replaced the Nottingham Local Plan 2015. I therefore have had regard to the relevant policies in the DPD in my assessment of the appeal.

Main Issues

3. The main issues are:
 - whether the proposal would preserve or enhance the character or appearance of the Park Conservation Area;
 - whether or not the proposal would provide appropriate living conditions for future residents with particular regard to external space, and
 - the effect of the proposal on the living conditions of the occupiers of Clumber Court with particular regard to privacy.

Reasons

Character and appearance

4. The appeal site is located within the Park Conservation Area (the CA). It encompasses a planned residential estate which retains many of its original features. The Park: A Conservation Plan for the Nottingham Park Estate 2005 (the CP) states that the layout plan remains almost intact and all but about a dozen of the 355 original houses built before 1918 in varying architectural

styles still exist, many without significant alterations. It goes on to state that the original buildings continue to relate harmoniously with a pervading landscape of boundary walls, mature gardens, tree lined roads, crescents, circuses and open recreational areas. At my site visit I saw this generally to be the case. As a result, the significance of the CA is largely derived from the form of the buildings, their layout and relationship to open space, including large verdant gardens and street trees.

5. The appeal site forms part of the former garden of 1 Maxtoke Road. It is acknowledged that No 1 is not one of the original estate houses. Furthermore, the garden area forming the appeal site is not part of an original garden, although the evidence within the appellant's Heritage Statement suggests it has been a discrete parcel of land from the late nineteenth century until the 1965 ordnance survey map shows it as the garden of No 1. However, its openness still contributes positively to the character and appearance of the CA, irrespective of its original function. This is reinforced through the presence of a number of trees on and around the site which add to the verdant nature of the CA.
6. The CP contains guidance for new development in order for it to preserve or enhance the character and appearance of the CA. It is clear that much of that guidance is aimed at preserving the original estate houses and their gardens. However, it also states that all applications to construct new buildings will be considered in the context of their impact on the settings of existing buildings and the overall character of the conservation area. Furthermore, the prevailing character of the original estate houses in terms of landscaped setting, building density, scale and traditional use of materials should not be compromised and remain predominant.
7. The proposal to subdivide the garden and erect a dwelling, would substantially reduce the garden setting of No 1 and result in a very small plot forming the appeal site. However, this is not an original house and garden, and the plot size would have some affinity with those on the adjacent Clumber Court. Nevertheless, the resultant relatively small appeal site would be largely covered by built development, leaving very little, if any, area for planting, thereby eroding the landscaped setting of surrounding houses, irrespective of their originality.
8. The appellant has submitted a Tree Survey – Arboricultural Implications Assessment (AIA) which assesses the condition of nine trees and a yew hedge sited in and around the appeal site. All of the trees and the hedge, except for T3 and T7 are covered by a Tree Preservation Order (TPO). The AIA identifies three trees within the appeal site (T3, T4, T5) all of which have been classified as U grade and the Council has given consent for their removal, as well as trees T6 and T7 just outside of the site. Trees T1 and T2 are located within the street, and the yew hedge outside of the site. They have been assessed as B2 grade with the trees having 20-40 years remaining contribution and the hedge 40+ years
9. The AIA assesses Tree T8 as Grade A1 and is of significant value and great care should be taken to ensure it is not damaged during development. I agree. The trees together, but particularly T8 contribute significantly to the character and appearance of the area, emphasising its space and verdant quality.

10. At my site visit I observed that the canopy of tree T8 projects extensively over the appeal site and this is also shown on drawing TPP-01¹. The AIA states that leaf fall from the surrounding trees is likely to be significant, the plane tree T8 in particular will drop a vast quantity of large waxy leaves; gutters and rainwater collection should be designed with this in mind.
11. Tree T8 would overhang the rear courtyard area and the rear elevation of the proposed dwelling. The AIA estimates it has a remaining contribution of 40+ years, therefore capable of further growth. Due to the proximity to the proposed house it is likely that some shading would occur both of the courtyard area and the glazing to the rear elevation of the house. The future occupiers would be aware of the proximity of the tree and that it is protected by a TPO when purchasing the property. However, it is not unreasonable to assume that dissatisfaction with shade, falling leaves and debris could well grow with experience. If the development were to be allowed therefore, there would be a significant risk of that leading to pressure for substantial reduction or complete felling of the tree which, despite the comments of the appellant, could be difficult for a reasonable local planning authority to resist. As a consequence, as consent has been granted to remove the majority of the other trees, then the site would become more urbanized and the verdant nature of this area would be severely eroded, particularly given the lack of space for planting within the appeal site, to the detriment of the character and appearance of the CA.
12. According to the appellant's Arboricultural Method Statement 2019 (AMS) the house would be sited within the root protection zones of trees T1, T2 and T8. However, it goes on to state that given the long standing existing outbuilding structure and retaining walls it is unlikely that the roots match this location as roots will be impeded by unfavourable conditions. A trench has been dug on the site to ascertain whether the roots of tree T8 would be near to the rear elevation of the proposed building. I note the concerns of the Council regarding the accuracy of the location of the trench, it did not though at my site visit offer any evidence of a root system. However, there is no substantive evidence regarding the root system of trees T1 and T2, two attractive trees which contribute positively to the street scene and the CA, or the potential effect on the hedge given its proximity to the proposed structure. Even if the building would not interfere with the roots of the trees, my concerns remain regarding the proximity of tree T8 to the proposed house.
13. While the plot would be filled with development, the differing land levels would mean that the proposed house would only project minimally over the tall boundary wall to Cavendish Crescent South where it would be most visible in the street scene. Nevertheless, the amount of built form on the appeal site would, in my view, lead to the appeal site being overly developed, which would have a potential detrimental impact on tree T8 and the landscape setting of the area harmful to the overall character of the CA causing harm to the significance of the heritage asset.
14. The boundary wall is an important part of the character and appearance of the CA, forming an impressive and dominant structure to the road. The proposed access from Cavendish Crescent South would breach the wall to allow vehicle access into the plot. However, the surround would be retained, and I noted

¹ Appendix 1 of the AMS.

similar examples elsewhere on the estate, including one close to the appeal site on the same road. While I note from resident's comments that this may have been an existing opening, it nevertheless demonstrates that an entrance could be formed without materially harming the contribution of the boundary wall to the significance of the CA.

15. The appellant has directed me to a number of what he considers to be similar developments in the surrounding area that have been granted planning permission by the Council or demonstrate the Council's inconsistent approach to development in the Park estate². However, these mostly appear to be the extension or change of use of existing buildings rather than a new dwelling in a subdivided plot.
16. The Council has referred me to a recent appeal decision for the erection of a new dwelling on the estate which was dismissed³. However, this was for the erection of a dwelling in the garden of an original estate house and therefore is different to the proposal before me now.
17. Whilst I have found the scheme to be acceptable in some respects, for the reasons above, I conclude that the proposal would fail to preserve or enhance the character or appearance of the Park Conservation Area contrary to Policies DE1, HE1 and EN6 of the DPD and Policies 10 and 11 of the Greater Nottingham Aligned Core Strategies: Part 1 Local Plan 2014 (the Core Strategy). These require, amongst other things that development reinforces valued local characteristics, has regard to local context, conserves and or enhances heritage assets in line with their interest and significance and protect and promote biodiversity.

Living conditions

18. The proposed house would contain two bedrooms and a study. It could reasonably therefore be occupied by a family. The garden space available would be via ground and first floor balconies to the front of the property and a courtyard and balcony to the rear of the property. Cumulatively the size of the external space would be an appropriate amount for a family.
19. However, the courtyard area to the rear and the ground floor balcony to the front, would both be enclosed by a retaining wall and a balcony above. This would lead to gloomy, oppressive conditions within the external space. The balcony above the rear courtyard would be narrow and dominated by the canopy of tree T8, particularly in the summer when in full leaf, when the balcony is more likely to be used. The first floor balcony at the front of the premises would be open to public view and therefore unlikely to be private. Therefore, the quality of the external space in totality would not be acceptable.
20. The rear balcony would be at a lower level than the properties to the rear at Clumber Court. Those properties have windows which would directly face the proposed balcony. However, I am satisfied that the distance between the existing and proposed buildings together with the intervening garage block and large tree T8, would mean that any overlooking between the properties would not be materially harmful.

² Clumber Lodge, 13 Huntingdon Drive, 7 Cavendish Crescent South, 25 Park Valley, 5 Clare Valley, 2 Ogle Drive,

³ Hardwick Road and Park Lodge Tattershall Drive

³ APP/Q3060/W/19/3228906

21. Whilst the proposal would not lead to an unacceptable loss of privacy for residents of Clumber Court, for the reasons above, I conclude that it would not provide acceptable living conditions for future residents and therefore it would be in conflict with Policy DE1 of the DPD. This requires amongst other things that there should be a satisfactory level of amenity for the occupiers of development.

Conclusion

22. The harm that I have found to the character and appearance of the CA would be less than substantial. In accordance with Paragraph 196 of the National Planning Policy Framework (the Framework) this harm should be weighed against any public benefits of the proposal.
23. Although small, the provision of one dwelling on a serviceable plot in an accessible location can be considered a public benefit that can be afforded limited weight. The Framework notes that great weight should be given to the conservation of heritage assets. Therefore, the public benefits do not outweigh the harm I have found to the CA.
24. I am not aware of the Council's five year housing land position. However, even if the Council is unable to demonstrate a five year supply, paragraph 11 d i of the Framework states that permission should be granted unless the application of policies in the Framework that protect assets of particular importance (which includes heritage assets) provides a clear reason for refusing the development proposed, as is the case here.
25. Moving on to the overall planning balance, I have identified that there would be conflict with the development plan as there would be less than substantial harm to the significance of a heritage asset which is not outweighed by public benefits. Neither would the proposal accord with policy for ensuring acceptable living conditions for future residents. Considered in total, the material considerations referred to above do not outweigh the conflict with the development plan.
26. For this reason, and having regard to all other matters raised, I conclude that on balance the appeal should be dismissed.

Zoe Raygen

INSPECTOR