
Appeal Decision

Site visit made on 14 January 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Appeal Ref: APP/T3725/W/19/3236896
2 Mill End, Kenilworth CV8 2HP

- 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 Alec Botham against the decision of Warwick District Council.
 - The application Ref W/19/0111, dated 24 January 2019, was refused by notice dated 18 April 2019.
 - The development proposed is two storey dwelling with a third floor in roof space attached to 2 Mill End.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on: i) the character and appearance of the area including the setting of the Kenilworth Conservation Area (KCA); ii) the living conditions of existing and future occupants with regard to the quality of amenity space; and iii) whether the proposal would be acceptable in respect of the risk of flooding.

Reasons

Character and appearance

3. The appeal site comprises an end terrace dwelling at 2 Mill End (No 2) and land to the side of this, which is partly occupied by a carport and includes an amenity area. The appeal site is prominently located on the junction of Stoneleigh Road, Mill End and Forge Road. It is also opposite a path which falls along part of the eastern boundary to the main section of the KCA.
4. Although the appeal site partly forms a gap in the streetscene and there are other modern dwellings, commercial buildings and a flat roofed extension nearby, in the main it forms part of well-proportioned and defined traditional terraced housing. This includes a generally consistent arrangement of fenestration and entrance features. Therefore, the appeal site along with other nearby terraced properties, positively contributes to the established urban character of the area. Consequently, and despite being outside the KCA, the appeal site and the terraced dwellings it forms part of are visible from the KCA and contribute positively to its setting and significance, which is largely derived from the collective quality of its built environment.

5. The proposal would infill a gap and is of a similar overall form to the host property, when viewed from the highway. However, the proposed contemporary detailing, along with the atypical fenestration arrangement to the front of the proposed dwelling, which includes 3 roof lights, 3 windows at first floor level, and the absence of a ground floor window, along with a double door front entrance, would severely disrupt the rhythm of the existing terrace and appear particularly incongruous. As such, the proposal fails to respond positively to, or respect the existing character of the street scene, by virtue of the use of incongruous design features which are a harmful to the established traditional street scene.
6. In light of the above, the proposal would introduce an uncharacteristic development in a prominent location which reflects poor design quality and would harm the character and appearance of the area and would also fail to preserve or enhance the setting of the KCA. I consider such harm to be less than substantial.
7. Similar to Policy HE1 of the Warwick District Local Plan 2011 – 2029 (LP), paragraph 196 of the National Planning Policy Framework ('the Framework') states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
8. The development would provide an additional dwelling in a location well served by existing facilities, whilst also reducing the need for new housing elsewhere, including on land outside the current Kenilworth Town boundary. The development would also generate construction activity. Therefore, there would be some social and economic benefits arising from the proposal. However, given the modest scale of the proposal (single dwelling), such benefits would be limited.
9. Having special regard to preserving or enhancing the CA¹, despite finding the harm to be less than substantial, I still attach significant weight to this. Such harm can be outweighed by public benefits. Having given limited weight to the public benefits identified in this instance, they are not sufficiently forceful to outweigh the less than substantial harm that I have identified.
10. For the above reasons, the proposal is contrary to Policies H1 and BE1 of the LP which collectively require that housing development on garden land, in urban and rural areas, will not be permitted unless the development reinforces, or harmonises with, the established character of the street and/or locality. Further that proposals should positively contribute to the character and quality of the environment through good layout and design. The proposal would also be in conflict with similar design aims of Policy KP13 of the Kenilworth Neighbourhood Development Plan 2017 – 2029 (KNP).
11. Furthermore, the proposal conflicts with Policy HE1 of the LP which in its explanatory text clarifies that in considering applications relating to Conservation Areas, the Council will require that proposals do not have a detrimental effect upon the integrity and character of the building or its setting. I also find the proposal contrary to similar aims of KNP Policy KP13 with regards to safeguarding heritage assets and their settings.

¹ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

12. The Council's decision notice also refers to Policy HE2 of the LP which mainly relates to unlisted buildings. Therefore, it is not directly applicable to the appeal proposal.

Living conditions

13. As a consequence of the proposal, there would be a significant reduction in the amenity space for No 2, this would be limited to an area to the rear of this property, measuring about 10 sqm.
14. In relation to the proposed dwelling, its amenity space would be about 23 sqm. Therefore, the amenity space for the existing and proposed dwelling would fall significantly short of the Council's requirement of 40sqm, as set out in the Warwick District Council Design Guide Residential, May 2018 (Design Guide). This shortfall significantly undermines the overall quality of the amenity spaces.
15. The appellant has drawn my attention to the neighbouring dwellings, 4 and 4a Mill End, stating that the amenity spaces at these properties are less than that proposed for 2 Mill End. However, these properties are not reflective of the wider area where amenity spaces are generally more spacious. Although open space facilities are available nearby, I do not believe that this would be a reasonable atonement for the failure to provide adequate private amenity space directly associated with the dwelling itself, in accordance with the Council's requirements.
16. The appellant also suggests that if the appeal were to succeed a financial contribution towards public open space would be secured. However, I have no detailed information in relation to such a requirement. Irrespective, there is no legal agreement to secure such a contribution. As such, this does not alter my findings on this particular issue.
17. For the above reasons, the proposal would harm the living conditions of existing and future occupants with regard to the poor quality of amenity space. This is contrary to the Council's Design guide and Policy BE3 of the LP, which amongst other things states that development will not be permitted which has an unacceptable adverse impact on the amenity of nearby uses and residents and does not provide acceptable standards of amenity for future users and occupiers of the development. I also find the proposal contrary to similar aims of KNP Policy KP13.

Flood risk

18. The appeal site lies within Flood Zones 3 defined by the Environment Agency (EA) Flood Map as having a high probability of flooding. The proposed development is considered 'More Vulnerable' under the Framework.
19. The Framework and the Planning Practice Guidance (PPG) require a sequential, risk-based approach to the location of development. The aim of the sequential test is to steer new development to areas with the lowest probability of flooding. It also indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. The PPG states that for the purposes of applying the Framework, the 'areas at risk of flooding' are principally land within Flood Zones 2 and 3. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

20. Table 3 - Flood risk vulnerability and flood zone 'compatibility' of the PPG identifies which tests are relevant for a proposal having regard to flood zone and vulnerability classifications. The first note to Table 3² of the PPG is clear that for the appeal proposal to be acceptable with regard to flood risk both the sequential test and exceptions test are required to be passed.
21. The PPG advises that, if the sequential test demonstrates that it is not possible for development to be located in zones with a lower risk of flooding the exception test may have to be applied. As such, national policy on flood risk is concerned with ensuring the location of development is appropriate in principle before considering flood resilience and flood mitigation measures.
22. The submitted Flood Risk Assessment (FRA) does not provide substantive evidence to demonstrate that there are no other sequentially preferable sites. As such, the proposal has failed to meet the requirements of the sequential test. The sequential test must be passed before the exception test can be applied. Therefore, it is not necessary for me to consider the exception test.
23. Notwithstanding that a letter from the EA dated May 2019, as appended to the appellant's final comments, identifies the flood risk for the location of the appeal site as medium, and the likelihood of flooding from surface water as low, I must make a decision based upon the current flood risk classification.
24. Consequently, the proposal does not overcome the need to firstly pass the sequential test to establish whether the appeal proposal is acceptable in principle on flood risk grounds. Taking all matters into consideration, including the lack of objection from the Local Lead Flood Authority in respect of drainage and surface water management, the proposal would not be acceptable in respect of the risk of flooding.
25. Based on the foregoing reasons, the proposal would be contrary to Policy FW1 of the LP, which amongst other things requires that planning applications should meet the national requirements and guidance in relation to the sequential and exception tests. Furthermore, that there will be a presumption against development within Flood Zone 3. Therefore, I also find conflict with KNP Policy KP21 which amongst other things requires that proposals should accord with LP Policy FW1. Although the Council's decision refers to Policy FW2, this is not in the evidence before me.

Conclusion

26. For the above reasons, I conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR

² Paragraph: 067 Reference ID: 7-067-20140306