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# Appeal Decision

Site visit made on 23 June 2020

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 June 2020**

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**Appeal Ref: APP/E0915/W/20/3247116**

**Bank Street, Longtown, CA6 5PS Easting:337842 Northing:568730**

- 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 Graeme Postlethwaite, Postlethwaite Construction Ltd against the decision of Carlisle City Council.
  - The application Ref 19/0572, dated 22 July 2019, was refused by notice dated 18 September 2019.
  - The development proposed is described as "demolition and rebuilding of Nos. 8 - 10 Bank Street as 2No. 3-bed terraced houses. Construction of 2No. 3-bed semi-detached houses and 1No. detached 3-bed house accessed via an existing archway at No.6 Bank Street".
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## Decision

1. The appeal is dismissed.

## Preliminary Matters and Main Issues

2. The appellant refers to a set of amended plans, making a number of alterations in response to the reasons for refusal as detailed by the Council. The Procedural Guide: Planning Appeals – England<sup>1</sup> clearly advises that the appeal process should not be used to evolve a scheme and "if an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal they should normally make a fresh planning application".
3. I note that the amended plans have not been subject to public consultation through the application process but have been seen by the Council who did not raise any objections to the submission of the plans with the appeal and while some comments were provided by third parties no specific objections were raised regarding the scheme. Therefore, having regard to the Wheatcroft<sup>2</sup> principles and in the interests of fairness and natural justice, I consider that on balance no party would be prejudiced if I considered the amended plans. Thus, my findings relate to the scheme as detailed in the amended plans.
4. The main issues are the effect of the proposed development on:
  - the character and appearance of the area including the Longtown Conservation Area (LCA).and

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<sup>1</sup> Procedural Guide: Planning Appeals – England (2019): Annexe M – Can a proposed scheme be amended?

<sup>2</sup> Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

- the living conditions of the occupiers of neighbouring residential properties, with particular regards to 6a Bank Street and the future occupiers of the proposed residential dwellings with particular regards to 8c Bank Street.

## **Reasons**

### Character and Appearance

5. The appeal site consists of 8 and 10 Bank Street, two terraced dwellings, with a large rear garden stretching down to the river that is accessed via an arch from Bank Street. The appeal scheme would result in the demolition of nos. 8 and 10 and the erection of two replacement properties fronting on to Bank Street and the erection of two semi-detached dwellings and one detached dwelling in the rear garden.
6. The LCA is based on the historic core of the village and which has an understated character due to the predominantly simple vernacular architecture. Much of the appeal site lies within the LCA. I note that the boundary shown on the Council's Longtown Conservation Area Map adopts a curious line at this point, excluding some of the rear garden of nos. 8 and 10. The parts of the appeal scheme that lie outside of the LCA nonetheless still have the potential to affect the significance of the LCA. The appeal site is in a prominent and open situation when viewed from the public space by the river and in views from within the LCA.
7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty for decision takers with respect to any buildings or other land in a conservation area, that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 193 of the National Planning Policy Framework (The Framework) states that great weight should be given to the conservation of designated heritage assets.
8. As shown on the submitted plans, the appeal scheme would appear as a dense development at odds with the open character of this part of the local area. In particular, the semi-detached properties, set towards the rear of the appeal site would occupy a prominent position, over-looking the river introducing a dense form of built development into an otherwise open area.
9. For the reasons stated above, the proposed dwellings would be incongruous and over dominant features at odds with the prevailing character and appearance of the area. The proposal thereby fails to preserve or enhance the character or appearance of the LCA, in relation to the statutory duty and would cause less than substantial harm to the significance of the designated heritage asset, in this case the LCA.
10. Paragraph 196 of the Framework states that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, as in this case, then the harm should be weighed against the public benefits. In terms of the public benefits, the appellant states that the provision of dwellings and the appellants intention to provide private rental properties, is of "strategic importance". I give the provision of additional dwelling some weight albeit this is a development of a small scale.

11. I find that the harm arising to the LCA outweighs the public benefits that the proposal would create.
12. I therefore find that the proposal would be detrimental to the character and appearance of the area. It would also fail to preserve the character and appearance of the CA and its setting. The proposal would therefore conflict with Policy HE7 of the Carlisle District Local Plan (CDLP) due to the harm to the character and appearance of the setting of the CA.

#### Living Conditions

13. With regards the effect of the development on the living conditions of existing and future occupiers, the Council's decision notice refers to Policy SP6 of the LP and specifically to criterion 1 and 7. While criterion 1 relates to the built form of the development such as density, scale, materials and detailing, criterion 7 relates to "residential amenity of existing areas" and "future users and occupiers". Furthermore, the Council's Achieving Well Designed Housing Supplementary Planning Document (April 2011) (the SPD) sets out various criterion and guidance to protect the living conditions of existing and future occupiers, in particular with regards to privacy.
14. The amended plans submitted with the appeal make a number of amendments in response to the Council's reason for refusal, such that the proposed development broadly complies with the separation distances set out in the SPD, with the exception of the front elevation of proposed dwelling 8c and existing dwelling 6a, that the appellant's appeal statement details is 9 metres.
15. The appellant acknowledges this "cause for concern" and I note from the submitted plans that there is the potential for future occupiers to overlook the rear garden space of that property, garden space that would be reduced as a result of the creation of car parking for the appeal scheme. Furthermore, the amended plans indicate the potential for obscure glazing to be applied to the upper floor windows of the property.
16. Nonetheless, even with the use of obscure glazing, the proposed building (No.8c) would be in close proximity to the neighbouring property, No.6a. As such, the potential for and perception of overlooking resulting in a loss of privacy for the occupiers of 6a would remain.
17. Furthermore, the proposed development would result in additional vehicle movements affecting the front and side to rear elevations of No.6a resulting in some additional noise and disturbance for the occupiers of that property.
18. Therefore, I find that the proposed development would have a detrimental impact on the living conditions of the occupiers of the existing neighbouring property contrary to Policy SP6 of the CDLP and guidance set out in the SPD, in so far as they seek to protect the living conditions of occupiers.

#### **Other Matters**

19. it is the appellant's case that, by virtue of a previously granted planning permission<sup>3</sup>, a fallback position exists whereby if the appeal scheme does not progress the alternative scheme, granting consent for two residential dwellings in the rear garden of the appeal site, will be developed.

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<sup>3</sup> 16/0994 determined 25 April 2017

20. I have not been provided with details regarding the discharge of relevant pre-commencement conditions or works carried out on site to implement the fallback planning permission, which would otherwise have lapsed. Nonetheless the fallback position is not disputed by the Council and as such on the basis of the evidence before me I find that on this basis there is greater than a theoretical possibility that the development referred to might take place.
21. However, from the plans submitted it appears that the fallback scheme would be less harmful than the appeal scheme and as such does not justify the proposal which, for the reasons detailed previously, would cause harm to living conditions and the character and appearance of the area including the LTCA.

### **Conclusion**

22. For the reasons given above I conclude that the appeal should be dismissed.

*Mark Brooker*

INSPECTOR