
Appeal Decision

Site visit made on 23 June 2020

by D M Young JP BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State

Decision date: 10 July 2020

Appeal Ref: APP/L2440/W/19/3240323

3 Lawyers Lane, Oadby, Leicestershire LE2 5QN

- 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 Jonathan Macleod against the decision of Oadby & Wigston Borough Council.
 - The application Ref 19/00145/FUL, dated 1 April 2019, was refused by notice dated 23 May 2019.
 - The development proposed is a 3-bed detached residential dwelling
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) Whether the development would preserve or enhance the character and appearance of the London Road and Saint Peters Conservation Area (the CA);
 - (b) The effect of the development on the living conditions of neighbouring occupiers with particular regards to overlooking, and
 - (c) The effect of the development on the Wash Brook wildlife corridor.

Reasons

Character and appearance

3. The appeal site is a broadly rectangular plot of former garden land. It is bounded to the north by Wash Brook, No 3 to the east and Lawyers Lane, a Bridleway, to the south. The site is tightly enclosed on its northern and southern boundaries by mature hedgerows and trees and as a result has a high degree of visual containment.
4. The surrounding area is residential in nature and comprises dwellings of varied design. The appeal scheme seeks permission for a 1.5/2 storey, three-bedroom detached dwelling. According to the Appellant the dwelling would be built to high environmental standards. A gated access would be provided to Lawyers Lane towards the western end of the site. The hedgerows along the site frontage would be removed and replaced with 1.5m high iron railings.
5. The site is located towards the edge of the CA with Lawyers Lane marking its southern boundary. Section 72(1) of the Planning (Listed Buildings and

Conservation Areas) Act 1990 (the Act) requires that in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The "*National Planning Policy Framework*" (the Framework) advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

6. Lawyers Lane is described in the Conservation Area Appraisal as "*an old footpath which has been subsequently built around in the latter part of the C20. It is flanked for most of its east-west leg by hedges or trees, except where this is broken by a modern bungalow [No 3] which is contemporary with the surrounding development*". The significance of Lawyers Lane to the CA is highlighted in paragraph 3.7 which describes it as "*the key public green space in today's Oadby*" thus contributing to the verdant character of the southern part of the CA.
7. Amongst other things, Policy 15 of the "*Oadby and Wigston Local Plan 2011-2031*" adopted 2019 (the LP) states that proposals for development on residential garden land will not be permitted unless it conforms to the guidance set out within the Council's Landscape Character Assessment. Policy 15 goes on to state:

"Proposals that split existing residential plots and propose development on the garden land of existing plots will not be granted planning permission unless the proposal sits comfortably, is consistent with, in character with, and respects the direct existing street scene in which it is situated. The Council will not accept development proposals that 'over develop' a site from its original intended or existing use".
8. In this case the appeal site is within the Urban Character Area O(i): Oadby Centre as defined in the "*Oadby & Wigston Landscape Character Assessment 2018*". Policy guidance O(i)/3 seeks to protect street patterns and retain plot sizes within the character area. Based on the foregoing policy context, it is clear that as a matter of principle, the sub-division of No 3 would conflict with LP Policy 15.
9. The submitted plans show the removal of six trees¹ in addition to the mature hedgerow along the site frontage. Although the conifers along the Wash Brook boundary are shown as being retained, it is almost inevitable that there would be significant pressure for removal given their proximity to the windows in the rear elevation and the outdoor slabbed area. If these trees and hedges were to be retained the resulting outlook from the rear facing windows and outdoor amenity space would be unacceptably poor. I do not consider the harm from the removal of the mature vegetation could be mitigated by replacement planting.
10. The dwelling would be sited very close to Lawyers Lane with little or no opportunity to implement any meaningful landscaping across the frontage. It would also be hemmed into its northern boundary with only a minimal amount of breathing space to its side elevations. The installation of entrance gates and railings as well as the bulk and mass of the property and associated hard surfaced areas would all completely change the character of the land. The

¹ T5, T6, T7, T8, T9 and T11

verdant and peaceful back-lane character of Lawyers Lane would be significantly diminished and replaced by an uninspiring, cramped and highly urbanised development. In my view this would represent a stark, grievous and irreversible intrusion into the CA.

11. I accept that the siting of the dwelling would be similar to No 3. However, that property makes a negative contribution to the CA and affords no precedent for the appeal scheme. Overall, I find that the development would cause significant harm to the character and appearance of the CA. Given the special attention that has to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas as set out in the Act, this harm weighs substantially against the proposal.
12. Although the level of harm would be '*less than substantial*', paragraph 196 of the Framework indicates that where this is the case, the harm should be weighed against the public benefits; I have not identified any significant public benefits in this case. I therefore conclude that the development would conflict with LP Policies 6, 15, 40, 41 and 44. Collectively these seek high-quality design that preserves and enhances designated heritage assets and local distinctiveness.

Living conditions

13. The two-storey side (east) elevation would face towards the small retained garden area of No 3. According to the plans, the shared boundary would be approximately 11m from the eastern elevation. Given the angle of overlooking and proximity, I concur with the Council that this would give rise to an unacceptable loss of privacy to the occupiers to No 3.
14. Whilst the existing occupiers of No 3 may be prepared to accept such an arrangement, I am required to protect the amenity of existing and future occupiers². On the second main issue I therefore conclude that the development would conflict with LP Policy 6 insofar as it seeks to prevent unacceptable overlooking.

Wildlife corridor

15. The appeal site is located immediately adjacent to the Wash Brook wildlife corridor which is part of the Borough's Green Infrastructure. As the County Council's Ecologist notes, it is lined with trees/scrub and provides a link between Lucas' Marsh and Fludes Lane wildlife sites.
16. The Ecologist refers to a '*5 metre natural open space to be retained alongside the brook*'. However, it is not clear where the policy support is for a buffer zone of this size. There is no mention of 5 metres in LP Policies 8 and 37 which deal with Green Infrastructure and biodiversity respectively.
17. The site itself is considered to have low habitat value apart from the line of conifer type trees along the northern boundary. I have noted speculation about the presence of water voles and otters. However, there is a notable lack of evidence to demonstrate that these species are actually present. Accordingly, I consider 5 metres is excessive in this instance.

² Paragraph 127 of the Framework

18. Nonetheless, LP Policies 8 and 37 seek a net-gain in Green Infrastructure/biodiversity through the preservation and enhancement of the Green Infrastructure network. Although some trees are shown as being retained, as outlined above, I have significant concerns about their long-term retention. Some of the trees earmarked for removal on the plans are within 2-3 metres of the corridor. Although the removal of individual trees is itself unlikely to have an adverse effect on the integrity of the corridor, I am concerned that the cumulative removal of established vegetation in close proximity to the brook would have a more significant effect.
19. Based on the above, and notwithstanding the lack of information in relation to species and habitats, the proposal would conflict with LP Policies 8 and 37 as it would fail to secure the necessary net gains to green infrastructure and biodiversity. Given the limited size of the appeal site, I do not consider this harm could be addressed by the use of planning conditions requiring replacement planting.

Other Matters

20. I have noted the Appellant's frustrations with the Council's handling of the planning application and particularly the pre-application advice. However, according to the Council, it was stated that a dormer styled bungalow with a first floor contained within the roof space may stand a greater chance of achieving planning permission. The scheme before me is not a dormer styled bungalow. In any event, the alleged advice as with all pre-application advice, would have been given on an informal basis and would not have prejudiced the Council's decision on a subsequent planning application.
21. I have considered the range of other planning decisions drawn to my attention by the Appellant but by reason of; site characteristics, location and development proposals, I find none to be directly comparable to the case in hand. In any event, I am required to assess the appeal before me on its own merits in the light of particular circumstances which apply in this case and this is what I have done.

Conclusion

22. For the reasons given above and taking into account of all other matters raised, I conclude that the appeal should be dismissed.

D. M. Young

Inspector