
Appeal Decision

Site visit made on 22 September 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2020

Appeal Ref: APP/C3240/W/20/3252247

2 Bridge Terrace, Lower Bar, Newport TF10 7JB

- 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 G Kelson against the decision of Telford and Wrekin Council.
 - The application Ref: TWC/2019/1006, dated 28 October 2019, was refused by notice dated 4 February 2020.
 - The development proposed is the creation of a new build dwelling, to include a detached garage.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal submission included an amended plan and a revised Ecological Impact Assessment (EcIA) that were not before the Council at the time of its decision. I have taken these into account as the Council and interested parties have had the opportunity to comment on these documents during the course of the appeal.
3. On the basis of the amended plan, the Council has withdrawn its objections over the effects on the occupiers of the properties at 1 to 5 Bridge Terrace (Nos 1 to 5) by way of overlooking and privacy. As the amended plan has removed the balcony nearest these properties, I see no reason to disagree and so I have not considered this matter further.
4. During the course of the appeal, the Appellant submitted a planning obligation by deed of undertaking under Section 106 of the Town and Country Planning Act 1990 (Undertaking), which I have also considered in my decision, along with the response on the Undertaking that the Council has provided.

Main Issues

5. The main issues are (i) whether the proposal would be in a suitable location for housing with regard to the spatial strategy for the area; (ii) the effect on designated heritage assets, including the Newport Conservation Area, the listed buildings at Nos 1 to 5 and the Newport Lock Scheduled Monument (SM); (iii) the effect on flood risk and drainage; and (iv) the effect on biodiversity interests.

Reasons

Suitable Location for Housing

6. The appeal site comprises an area of land which is in use as a paddock that lies to the rear of the properties on Bridge Terrace. It also contains a number of small structures that are located around a loose stone apron closest to where the access is taken via a track from the road. To the rear of the site is further paddock land which extends out into the open countryside. Most of the built up area of Newport lies east and south of the site.
7. Under the Council's Telford & Wrekin Local Plan 2011-2031 (2018) (Local Plan), the site lies in a rural area. This is defined as the area which lies outside of the built up areas of Telford and Newport. Policy SP3, amongst other matters, states that the Council will support development in the rural area where it addresses the needs of rural communities. Policy HO10 states that, outside of the named settlements, residential development will be strictly controlled in the rural area. It goes on to set out the types of such development that the Council will support, including with reference to Policy HO11 which concerns affordable rural exceptions.
8. The proposal is for a self-build dwelling. This type of residential development is not included in those listed in Policy HO10 and nor would it constitute affordable housing under Policy HO11. The appellant considers that Policy HO11 is a restricted policy in this regard. However, the National Planning Policy Framework (Framework) refers to planning policies for those that require affordable housing and so I find that Policy HO11 is consistent with the Framework.
9. I conclude that the proposal would not be in a suitable location for housing with regard to the spatial strategy for the area. As such, it would not comply with Policies SP3 and HO10 in respect of how they seek to address rural housing need. It would also not comply with Policy H1 of the Newport Neighbourhood Development Plan (2017 – 2031) (NDP) where it states that housing development within Newport will be supported in order to meet local needs. I deal with matters in relation to the Framework's presumption in favour of sustainable development later in my decision.

Designated Heritage Assets

10. The part of the site where the proposed dwelling would be located abuts the boundary with the Newport Conservation Area. The significance of the adjacent part of the conservation area is largely defined by frontage development of a height of 2 or 3 storeys. This results in a distinct enclosed form of development and it contributes favourably towards the historic market town character.
11. The buildings themselves are mainly 18th and 19th century, including Nos 1 to 5, which are grade II listed. The former Newport Branch of the Shropshire Canal also makes an important contribution to the significance. This lies a short distance from the site and includes the well preserved SM which consists of a stone roving bridge and a lock.
12. The land to the rear of the frontage buildings in the vicinity of the site contains more modest forms of development and the land readily becomes open in its character, consisting of paddocks, fields, trees and vegetation. Along with the

- canal, it allows the countryside surroundings to permeate into the town, maintaining its connection as a rural market town with its hinterland. The site ably demonstrates this characteristic with its paddock form. As it forms part of the open land close to the designated heritage assets, it falls into their setting.
13. The proposal, by virtue of its siting to the rear of the Bridge Terrace properties as backland development, would significantly disrupt the setting of these assets. It would not reflect the historical street pattern of frontage development. Moreover, it would result in much of the loss of the green space character of the site to a not unsubstantial 2 storey dwelling and a separate large garage building. It would, in effect, extend the built area of the town out and there would be a reduction of the extent that the countryside pervades into the town. It would lessen the significance of the relationship between the town and its rural surroundings.
 14. As the listed properties at Bridge Terrace largely form the extent of the current built edge, their appreciation of the countryside as it contributes to their significance would also be diminished with the siting of the proposal in between. The visual interest from the rear of these properties and from the conservation area would also be curtailed in this regard. The reduction in the site's open character would also diminish the significance of the SM because part of its countryside setting would be lost to the proposal.
 15. The residential development to the north is considerably more contained because, unlike the site, it does not form part of the area of the countryside that extends into the town. That the proposal is contiguous with this development and the Bridge Terrace properties does not address the loss of the site itself to the significance and nor does that larger areas of countryside to the west would remain undeveloped.
 16. The design of the proposed dwelling would not fit comfortably with the properties in this part of the conservation area. Its scale and massing would be substantial, given that it would be located to the rear of the existing properties, and more so than the existing diminutive structures on the site. Whilst some consideration has been given to the local vernacular in terms of detailing and even accepting there is some variation in the area, this would not overcome the harm.
 17. In taking these considerations together, the proposal would have an adverse effect on the significance of the setting of these assets. It would also not preserve the setting of the listed buildings.
 18. I conclude that the proposal would have an unacceptable effect on designated heritage assets, including the conservation area, the listed buildings and the SM. Accordingly, it would not comply with Policies BE1, BE4 and BE5 of the Local Plan where they collectively afford protection to the historic environment, including having special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses, and not supporting development that would not do justice to the setting and surroundings of a conservation area or would impair views of the area.
 19. It would also not comply with Policies H2 and RS1 of the NDP where they are concerned with residential development being in keeping with the character and appearance, and the setting of the Newport Conservation Area.

20. It would also not accord with the Framework where it seeks to conserve and enhance the historic environment. This includes where it concerns the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, and the desirability of new development making a positive contribution to local character and distinctiveness, amidst other considerations.

Flood Risk and Drainage

21. The southern boundary of the site lies adjacent to the Strine Brook, which is set down a vegetated bank. The canal is found a short distance beyond, separated by further vegetation. The appellant's Flood Risk Assessment (FRA) states that part of the site lies within Flood Zone 2 (medium probability flooding) and Flood Zone 3 (high probability flooding), and that it is not a location that benefits from flood defences. The site is, therefore, at the potential risk of flooding. The type of residential use is also classified as 'more vulnerable' to flood risk, under the Planning Practice Guidance (PPG): Flood Risk and Coastal Change.
22. The main parties disagree over whether sufficient information has been submitted as regards a drainage strategy and the implications this has on flood risk. It is intended simply that surface water will be subject to a sustainable drainage systems scheme with all surface water collected and stored before being discharged at an attenuated rate to a soakaway, so as to ensure that the rate of discharge is no greater than the green field rate of discharge at 20 litres per second plus an allowance of 30% for climate change.
23. What is not evident from this statement is, though, how this would safely manage the residual flood risk. It does not detail how such attenuation run off would seek to minimise the flood risk from the site. Whilst it is on the lines of what the Lead Local Flood Risk Authority consider the Drainage Strategy should contain, it lacks sufficient detail and explanation in order for me to be persuaded that it would not be at risk of flooding or would not increase flood risk elsewhere. In coming to this view, I have also considered the flood resilience and other mitigation measures that are set out in the FRA. I am, however, mindful that the site and type of development is clearly vulnerable as regards flood risk.
24. In relation to foul water disposal, beyond that a type of package treatment plant would be utilised, there is similarly limited information to assess the effects from this aspect of drainage.
25. On the basis of the information before me, I conclude that the proposal would have an unacceptable effect on flood risk and drainage. Therefore, it would not comply with Policies ER11 and ER12 of the Local Plan which concerns sewerage systems and water quality, flood risk management and reducing instances of flooding, amongst other considerations.

Biodiversity

26. The canal is designated as a Site of Special Scientific Interest. It is of national importance for its range of submerged and broad-leaved plant communities, a continuous narrow fringe of marginal swamp and, in some places, more extensive areas of fen. The EcIA also acknowledges that the Strine Brook is an important ecological feature.

27. The EcIA states that the only potential negative impact relates to drainage matters. This concerns principally the Strine Brook. The EcIA expressly states that it does not deal with this issue further. This is on the basis that the necessary precautions are in place. However, as I have set out above, there is a lack of sufficient information as regards the drainage arrangements, a matter on which the Council's Ecologist also raised concerns in the consultation response made to the planning application. As a consequence, I also reach a similar conclusion as regards the effect on biodiversity interests.
28. Based on the EcIA, I am satisfied that there is not a reasonable likelihood of protected species being present, including bats. Mitigation and enhancement are also proposed for bats and for birds, amongst other such measures. This does not, though, address the uncertainties that arise from potential drainage impacts on biodiversity.
29. Based on the evidence before me, I conclude that the proposal would have an unacceptable effect on biodiversity interests. Hence, it would not comply with Policy NE1 of the Local Plan which states that biodiversity assets will be protected, maintained and enhanced, amongst other considerations. The Council's reason for refusal also contains Policy NE2 which relates to trees, hedgerows and woodlands. I do not find conflict with this policy as it does not seem to concern itself with the ecological value of watercourses, but this would not address the conflict with Policy NE1.

Planning Balance

30. Section 1 of the Self Build and Custom Housebuilding Act 2015 as amended (2015 Act) requires local authorities to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. Local authorities are also subject to duties under sections 2 and 2A of the 2015 Act to have regard to this and to give enough suitable development permissions to meet the identified demand presumption. The 2015 Act is an important material consideration in my decision. In addition, the Framework also supports self-build through providing for size, type and tenure of the housing needed for different groups in the community.
31. As the proposal would constitute a self-build development and with the appropriate controls set in place by the Undertaking, it would be supported in this regard. I also accept that there is not the evidence to suggest that the Council has given enough suitable development permissions to meet the identified demand presumption, given the limited evidence that the Council has provided on this matter. As a result, the proposal would make a contribution to alleviate demand for self-build. It would also give rise to some economic benefit, be in a location that is highly accessible to local services, provide family type housing and, according to the submissions, be energy efficient.
32. The development plan does not contain a policy which concerns itself specifically with self-build. However, with spatial policies that would support self-build in built up areas, or through adhering to the criteria of Policies H010 and H011, this does not amount to the Council not meeting its requirements under the 2015 Act as regards its development plan. There is not a requirement under the Framework for such a policy, as the list of types of housing for different groups is not intended to be prescriptive in this regard. Nor does the PPG: Housing Needs of Different Groups (July 2019) require such a policy.

33. Hence, I find the planning policies of the development plan are consistent with the Framework. They attract significant weight in my decision. The primary importance of the development plan as regards decision making is clearly set out in Section 38 (6) of the Planning and Compulsory Purchase Act 2004, and this is unchanged by the 2015 Act. The 2015 Act also refers to suitable development permissions. This does not mean that every self-build development will be suitable. The proposal would not be suitable because of the concerns that I have identified.
34. In relation to the various appeal decisions and other planning permissions concerning other developments that I have been referred to, I do not dispute that a site that is adjacent to a settlement boundary is capable of being considered accessible to services, that a deliverable 5 year housing land supply does not obviate the need for self-build provision and that a legal agreement is necessary for this type of development.
35. With regard to the location of the proposal before me and the particular issues that arise, the development plan is determinative for the reasons that I have set out. Whether or not a lack of a self-build development plan policy renders the plan out of date depends on whether the plan satisfactory provides for this type of development, amongst other considerations. Again, as I have said above, I consider this to be the case. I am satisfied that the circumstances from these other developments are sufficiently different so as not to alter my conclusion.
36. The presumption in favour of sustainable development under paragraph 11 of the Framework also does not apply because, the application of policies in this Framework that protect areas or assets of particular importance, related to designated heritage assets, provides a clear reason for refusing the development proposed.
37. In relation to the harm that arises, this concerns the suitability of the site for housing, and the effect on designated heritage assets, flood risk and biodiversity. It conflicts with the development plan policies of the Local Plan and the NDP that I have set out. This attracts significant weight in my decision and counts against the proposal. Set against this would be the benefits. The weight to be attached to the benefit as a self-build would be moderate with the one additional unit that would result, even with the Council's lacking evidence on meeting such demand. All other benefits carry limited weight. In taking these considerations together, the harm would not be outweighed by the benefits.

Conclusion

38. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR