
Appeal Decision

Site visit made on 12 January 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/W2465/W/20/3261455

46-46A and 48 Uppingham Road, Leicester LE5 0QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Zuleka Momla against Leicester City Council.
 - The application Ref 20192228 is dated 10 November 2019.
 - The development proposed is new block 4 x 1 bed two storey residential building to the rear following demolition of existing building, parking, cycle store and amenity area.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the living conditions of occupiers of existing properties and whether the proposal would provide satisfactory living conditions for future occupiers, and
 - highway safety.

Reasons

Character and appearance of the area

3. The site encompasses the plots associated with 2 properties located at the end of a short terrace. The properties are two and three storeys high and both are sub-divided into flats. The rear gardens of both plots are relatively deep, like those of neighbouring properties on Uppingham and Sulgarve Roads. The rear gardens of both properties have detached outbuildings in them, as do other properties within the vicinity of the site. In contrast to the back-to-back, block/grid layout of properties on surrounding streets, the site is located within a triangular shape of built form, comprising of properties on Uppingham, Sulgarve and Overton Roads. The rear boundaries of the plots on these roads back on to each other, thereby filling the triangle.
4. Buildings on Uppingham Road close to the site are a mix of three and two storeys. Properties located on the surrounding streets are mainly two-storey terraced dwellings. Many of the properties on Uppingham road have

commercial units on the ground-floor with residential uses above. Although the surrounding area is predominantly residential, there is a mix of uses within the vicinity of the site.

5. The proposed block of flats would be sited close to the rear garden boundary of the 2 host properties and close to the side boundaries of neighbouring properties. The building would extend across the width of both plots; the extent of private outdoor space provided would be very small. There would be separate vehicle and pedestrian access points off Uppingham Road. The vehicle access would be between the respective gable ends of Nos 48 and 50 and would be narrow at around 2.9 m wide. The driveway and parking area would cover virtually all the space between the rear of number 48 and the proposed building, thereby eroding the characteristic of deep rear gardens. I consider the proposal would constitute a form of back-land development of poor quality in terms of its layout.
6. In addition to the layout, the size, scale, and design of the proposed building, ie a two-storey block with first-floor balconies projecting off its front elevation, would be an incongruous feature located towards the centre of the triangle of built form described above. Although the building would not be visible from most parts of Uppingham, Sulgarve and Overton Roads, it would be visible from the rear of many of the properties located on these roads.
7. I therefore conclude that the proposal would cause significant harm to the character and appearance of the area. As such, it does not accord with Saved Policy H07 of the City of Leicester Local Plan (Saved Policies Version, 2006), (CLLP), Policy CS03 of the Core Strategy-2014, (CS), or design policies in the National Planning Policy Framework (the Framework). These policies collectively, and among other things, require development to be of high-quality design, including layout, visually attractive and to contribute positively to the character and appearance of the area.

Living conditions - existing and future occupiers

Existing occupiers

8. As noted above, virtually all the existing deep rear garden of No 48 would be altered to a hard-landscaped driveway and car parking area. Although there is a relatively large outbuilding in the garden at present, there is still more soft landscaping to the rear of the property than built form. Consequently, the outlook from the rear of No 48, which has habitable room windows in its rear elevation, would change from that of a deep garden with a single-storey, domestic outbuilding in it, to one dominated by an extensive hard-landscaped area comprising of driveway and a parking area for up to 6 No cars, and a two-storey building sited at the end of it.
9. The vehicular traffic that would be generated by the proposal would pass between the gable ends of numbers 48 and 50, and the car parking area would be close to the rear of these properties. No 48 is in residential use as flats and although No 50 has a commercial use on the ground-floor it is possible that it has residential use on the first floor. However, even if there is no residential use above No 50, due to the potential extent of traffic and the parking of vehicles, the occupiers of No 48 are likely to experience noise and disturbance from engines revving, car doors banging, headlamps shining and people talking and/or laughing.

10. Furthermore, existing occupiers of No 48 would retain very little private outdoor space. Also, the plans do not depict any boundary treatment separating the resultant outdoor space of No 48 from the proposed driveway. As such, the outdoor space would not be private.
11. The plans also do not depict any boundary treatment between the garden to be retained to the rear of No 46 and the proposed pedestrian path or vehicle driveway. Consequently, existing occupiers of No 46 would also have no privacy whilst using their outdoor space.
12. Hence, due to the matters identified above, ie poor outlook, noise disturbance and lack of privacy, I conclude that the proposal would significantly harm the living conditions of occupiers of the existing, host properties.
13. I have considered whether a condition requiring details of boundary treatment to be submitted, approved, and implemented would overcome any of the harms identified. It is possible that a boundary fence could be erected around the resultant rear gardens of Nos 46 and 48 to ensure their outdoor space is private. However, a fence along the resultant rear garden boundary of No 46 would create an issue relating to the living conditions of future occupiers of proposed flat 1, as it would be positioned very close to a habitable room window on the front elevation of the proposed flat. I consider that the harm identified regarding noise disturbance and outlook could not be overcome by conditions.
14. I therefore conclude that the proposed development would substantially harm the living conditions of existing occupiers of No 48. As such the proposal does not accord with saved policies PS10 and H07 of the CLLP, Policy CS03 of the CS or sub paragraph 127 (f) of the Framework. These policies collectively, and among other things, require development to ensure a high standard of living conditions for existing users, and to create buildings and spaces that are fit for purpose.

Future occupiers

15. The plans do depict a 1.8 m boarded fence along the rear boundaries of the proposed block of flats, enclosing the proposed rear gardens, cycle parking and bin storage areas. However, as indicated above, no other boundary treatments are shown on the plans.
16. In these circumstances flats 3 and 4 would have a very poor outlook at the front from the lounge and bedroom windows, which would primarily be onto the shared driveway and car parking area, where cars could be parked around 2-3 m from the windows. The outlook from the kitchen window at the rear of flat No 3 would also be poor, as it would be onto a 1.8 m high timber fence sited close to the window.
17. Flats 1 and 2 would have an outlook at the front from the lounge and bedroom windows primarily onto the rear garden of No 46. As noted above, if boundary treatment was erected along the rear of the retained garden of No 46 then the outlook from the lounge window of flat 1 would be very poor, as it would be onto the boundary treatment, at a distance between 2-3 m from the window.
18. If no boundary treatment was erected along the rear boundary of the resultant garden of No 46, then there would be a significant privacy issue in respect of

flat 1, as occupiers of No 46 would be able to look into the lounge and bedroom of flat 1 when using their rear garden.

19. Due to the comings and goings of up to 6 cars, future occupiers of the proposed flats, particularly Nos 3 and 4, would experience significant noise and disturbance from the vehicles, with engines revving, car doors banging and headlamps shining.
20. As noted above, the proposed private outdoor amenity areas to the rear of the flats are very small; particularly the area to the rear of flats 3 and 4. The extent of the proposed private outdoor space is not of a standard enjoyed by neighbouring residents, where the properties have deep rear gardens.
21. I therefore conclude that the proposal would not provide satisfactory living conditions for future occupiers on respect of outlook, noise disturbance, extent of private outdoor space and privacy. As such, the proposal does not accord with saved policies PS10 and H07 of the CLLP, Policy CS03 of the CS or sub paragraph 127 (f) of the Framework. These policies also collectively require development to ensure a high standard of living conditions for future users.

Highway safety

22. Uppingham Road is a main arterial route into the City and there are double yellow lines both sides of the road to restrict on-street parking. There is a pedestrian crossing directly in front of the site. At present, there is space to accommodate up to 5 parked cars at the front of the properties. The proposal would result in one space less to ensure vehicles could use the proposed access between Nos 48 and 50. The proposal includes 6 No car parking spaces, 5 of which would be of a suitable size; however, I consider the one that would be closest to No 48 would not be of a suitable/functional size.
23. Cycle parking would be provided to the rear of the proposed flats and in the resultant rear garden of No 46, the details of which could have been secured by condition should I have been allowing the appeal. The width of the existing/proposed access between Nos 48 and 50 is/would be around 2.9 m, which is well below the Local Highway Authority (LHA) standard of 5.8 m for an access of this nature. The aisle to the rear of the parking spaces would be around 3.9 m deep; again, this is well below the LHA standard of 6 m.
24. Given that future occupiers of the proposed flats would have access to public transport into the City centre, with bus stops close to the site, and that suitable cycle parking facilities could be provided on site, I consider the extent of the proposed on-site car parking would be sufficient for future users and visitors, and that the spaces retained at the front of the host properties would be sufficient for existing occupiers.
25. However, I have concerns regarding the narrow width of the access and the narrow aisle width, which would make it difficult to negotiate access into the site and make it difficult to readily turn into and out of the proposed car parking spaces. Such circumstances may deter future occupiers from using the on-site facility; consequently, they may seek to park at the front of the property instead, which would result in obstructing footpaths used by pedestrians, some of which may have disabilities. Such obstruction could also interfere with the pedestrian road crossing. I therefore conclude that the proposal is likely to create an unacceptable highway safety issue.

26. Consequently, the proposal would not accord with saved Policy AM01 of the CLLP, which requires development to successfully incorporate the needs of pedestrians and people with disabilities into the design of the scheme; nor does it accord with paragraph 109 of the framework, which advises that development should be prevented or refused if it would have an unacceptable impact on highway safety.

Other Considerations

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires me to determine the proposal in accordance with the development plan, unless material considerations indicate otherwise.
28. From the evidence before me, the Council cannot demonstrate a 5 year housing land supply (5YHLS); the parties agree that the extent of HLS is 3.5 years in relation to the Core Strategy target and 2.8 years in relation to the higher, more up-to-date Housing & Economic Development Needs Assessment figure (HEDNA). Consequently, in accordance with paragraph 11 (d) of the Framework, the policies which are most important for determining the application are out of date. Therefore, there is a presumption in favour of sustainable development, and permission should be granted unless, as advised in 11(d)(ii) of the Framework, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
29. The proposal would contribute to the Government's objective of significantly boosting the supply of homes. I attach significant weight to the provision of 4 flats in the context of the extent of the Council's shortfall of housing land.
30. The Framework advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area; as such, great weight should be given to the benefits of using such sites in existing settlements for homes. The proposal seeks to make use of a small site, which is located within a settlement. Therefore, this attracts great weight in accordance with the Framework.
31. The site is located within easy access of a range of services and facilities which would meet the day-to-day needs of future occupiers of the proposed flats and they would have access to a range of employment opportunities. The site also provides easy access to public transport; along with the provision of cycle storage facilities and services and facilities within walking distance, the proposal would promote walking, cycling and public transport use. The location of the site and the opportunities to use modes of transport other than the private motor car weigh in favour of the proposal.
32. The Framework also promotes the use of brownfield land and underutilised sites and advises that substantial weight should be given to the value using suitable brownfield land within settlements for homes. The evidence suggests that part of the site, the detached building located at the end of the rear garden of No 46, is brownfield, as the building apparently has a B1/B2 use. The appellant has also pointed to the benefits of removing a building with commercial uses from the proximity of residential properties. However, the extent of the site that is brownfield is minor, and most of the site is residential garden in a built-up area, which does not constitute previously developed land. Furthermore, the building is in poor condition, it is sited at the bottom of a

garden, it only has a pedestrian access and there doesn't appear to be any car parking area. Bearing these factors in mind, I attach little weight to the building being brownfield land.

33. The proposal would also provide some economic benefits, during the construction phase and as a result of future occupants contributing to the local economy. However, due to the minor scale of these benefits I attach limited weight to this matter.
34. The appellant points to elements of a range of development plan policies which support the proposal, such as CS1, CS2, CS6, CS14, CS15, PS10, AM02 and AM12. Collectively, and among other things, these policies require 25% of residential development to be on smaller, non-strategic sites; direct development to locations with access to, and therefore support, public transport, walking and cycling; ensure provision of appropriate car and cycle parking spaces/facilities. These elements of these policies are consistent with the aims & objectives of the Framework.
35. I also consider that, with regards to policies AM01, PS10, H07 and CS03 referred to above, and their requirements for good design, protection of the character and appearance of the area, securing high quality living conditions for existing and future users and maintaining highway safety, are consistent with the Framework.

Planning Balance & Conclusion

36. The Framework also advises that sustainable development includes an environmental objective; as such, the planning system should contribute to protecting and enhancing the built environment. Additionally, good design is deemed to be a key aspect of sustainable development. Decisions should ensure that developments function well and add to the quality of the area; are visually attractive as a result of good architecture and layout; are sympathetic to local character and create places with a high standard of amenity for existing and future users. Finally, the Framework confirms that development can be refused on highway grounds if there is an unacceptable impact on highway safety, not just a severe impact on the road network.
37. Taking account of all the above, I consider that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits of the proposal as outlined when assessed against the policies in the Framework as a whole. Consequently, the presumption in favour of sustainable development does not apply.
38. Therefore, the proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which indicate that my decision should not be taken other than in accordance with the development plan. For the reasons outlined, I therefore conclude that the appeal is dismissed.

J Williamson

INSPECTOR