



Appeal Decisions

Site visit made on 4 May 2021

by Martin H Seddon BSc MPhil DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 August 2021.

Appeal A Ref: APP/Z1510/W/20/3252821

90-92 Newland Street, Witham, CM8 1AS

- 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 Purdy against the decision of Braintree District Council.
 - The application Ref: 19/01757/FUL, dated 12 September 2019, was refused by notice dated 21 November 2019.
 - The development proposed is alteration and conversion of shop, store, and offices into two shops and eight flats. Demolition of outbuilding and erection of a bungalow to the rear off Lawn Chase.
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Appeal B Ref: APP/Z1510/W/20/3252823

90-92 Newland Street, Witham, CM8 1AS

- The appeal is made under section 20 of the Town and Country Planning Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Purdy against the decision of Braintree District Council.
 - The application Ref: 19/01758/LBC, dated 12 September 2019, was refused by notice dated 21 November 2019.
 - The development proposed is alteration and conversion of shop, store, and offices into two shops and eight flats. Demolition of outbuilding and erection of a bungalow to the rear off Lawn Chase.
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Decisions

1. The appeals are dismissed.

Preliminary Matters

2. The development plan includes the Braintree District Local Plan Review (2005) (Local Plan) and the Braintree District Council Core Strategy (2011). The emerging development plan is the Publication Draft Local Plan (2017). The plan is in two sections. Section 1 is a strategic plan for North Essex and was adopted by the Council in February 2021. The Council refers to policy CS 9 of the Core Strategy in its reasons for refusal. However, adoption of Section 1 had the effect of superseding policy CS 9. Section 2 of the publication Draft Local Plan is currently the subject of examination and little weight may be accorded to its relevant policies at present.
3. The Planning Officer's report dealt with both the planning application and the application for listed building consent. However, separate decision notices were issued for refusal of the application and listed building consent.

Main Issues

4. The main issues in relation to appeal A are:
 - the effect of the proposals on the living conditions of future occupants of the buildings in respect of outlook, ventilation, received daylight and access to adequate amenity space, and
 - whether the appeal site would have appropriate access on to an adopted highway.
5. The issues regarding appeals A and B are:
 - whether the proposals would preserve the listed buildings of 90-92 Newland Street or their setting or any features of special architectural or historic interest which they possess, and
 - whether the proposals would preserve or enhance the character or appearance of the Witham Town Centre Newland Street Conservation Area.

Reasons

6. The appeal site includes the grade II listed buildings of Nos.90 and 92 Newland Street (the buildings) and land to the rear, which has a dilapidated storage outbuilding. The neighbouring building of the United Reformed Church is also a listed building. The site is in a sustainable town centre location with good access to services and facilities. It is also within the Witham Town Centre Newland Street Conservation Area.
7. The Core Strategy indicates that Witham is one of the main towns in the District, with opportunities for future development.

Living conditions of future occupants (Appeal A only)

8. The Council considers that the proposal would constitute an overdevelopment of the site through the provision of a cramped internal layout which would fail to provide an acceptable standard of accommodation in terms of general amenity, space standards, outlook and received daylight.
9. In terms of space standards, the appellant has referred me to appeal decision ref: APP/Z1510/W/18/3217084 at 32 & 34 King's Road Halstead. In that appeal the Inspector found that because the Council did not have an up to date development plan, the National Described Space Standards (NDSS) might be used as a useful guide but could not be accorded significant weight. The Council has indicated that flat 5 would be around 33 m² in floor area, whereas the NDSS require a one bed flat to have a floor area of 39 to 50 m² depending upon the number of occupants. The floor area of flat 5 would only be marginally below the NDSS requirement for a one person flat. The shortfall in floorspace would be insufficient reason on its own to justify refusal of the appeal. However, it does add weight albeit limited, to my decision.
10. Ground floor flat 4 would be a one bed unit with only a single window, principally serving a living area, and providing an outlook to the neighbouring church car park. This limited fenestration would result in inadequate natural lighting and ventilation for the kitchen and bathroom in particular as they

would be sited more centrally within the building compared to the living and bedroom areas.

11. I agree with the appellant that it is unlikely that visitors to the church would wait in the car park with their engines running for any significant period of time. However, there is a possibility that cars or vans could park in front of any of the proposed ground floor windows and unduly reduce the outlook from ground floor flat 4 and ground floor flat 3, which would include 2 two ground floor windows around 1 m² in area facing the car park. Flat 5 at first floor level would have a single 1 m² window allowing overlooking of the car park and not providing direct ventilation for the proposed shower area.
12. The appellant indicates that the level of ventilation and access to natural light is controlled by the Building Regulations, to which the accommodation would comply with in full. Although that may be the case, I find that the proposal to accommodate 8 flats in the building would result in poor and oppressive living conditions in some of the accommodation, in terms of inadequate outlook, sufficiency of ventilation and received daylight.
13. Turning to amenity space, the Essex Design Guide indicates that 200 m² of communal amenity space would be required for the proposed 8 flats. I note that the Council's supplementary guidance advises that the guide should be used flexibly. The appeal site is within the town centre and the appellant suggests that the proposed flats would be more likely to attract single persons rather than families. However, there is no guarantee that this would necessarily be the case, particularly as two of the proposed flats would have 2 bedrooms.
14. The proposed flats would have car parking and drying space, but no access to a useable communal space. The proposed bungalow would have sufficient amenity space, but its siting would rule out the possibility of providing any significant area of amenity space for the occupiers of the proposed flats.
15. The appellant has referred to appeal ref: APP/Z1510/W/18/3212375 in which the Inspector allowed the erection of 6 x 1 bed dwellings within a courtyard development and 1 flat over a garage at the rear of 51-57 Newland Street. However, although the proposed development involved urban infill in the town centre it included independently accessed 1-bedroom houses with a front garden and a back yard rather than a proposed building conversion to flats and a bungalow.
16. The appellant has advised that extensive leisure facilities are available within a few steps of the site, together with large areas of open space immediately opposite. Despite these other opportunities, I consider that conversion of the buildings at the density proposed should also provide some immediate access to communal amenity space for its future occupants.
17. For the above reasons I find that the proposal would conflict with Local Plan policy RLP 90 which seeks high standards of layout and design.

Highway safety (appeal A only)

18. The Council's reasons for refusal include that the red line for the application site did not connect to the adopted highway. 'Lawn Chase' would be used as a means of access to the site. At my site inspection I confirmed that Lawn Chase

linked the site to Newland Street. It serves a number of dwellings and has a 'Private Road' sign just before the first bungalow of 'Kirkside'. Lawn Chase did not appear to be physically restricted as an access to the appeal site and the appellant has advised that he has full right of access up to the point marked by the private road sign. Any dispute over the appellant's right of access would be a matter for resolution between the parties concerned. I note that the Highway Authority had no objection to the proposal subject to conditions regarding a residential travel plan and the provision of cycle parking. The Highway Authority did not indicate that the proposal would fail to result in a safe and suitable access to the site for all users, as indicated in the National Planning Policy Framework (the Framework). I conclude therefore that the site would be capable of having appropriate access to an adopted highway and there would be no conflict with Local Plan policies RLP 10 and RLP 90.

Effect on listed buildings and conservation area (Appeals A and B)

19. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, when assessing development proposals, special attention should be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The planning application decision notice did not refer to a reason for refusal on heritage grounds. Nevertheless, in accordance with the duties under the Planning (Listed Buildings and Conservation Areas Act) 1990 I must assess the impact of the proposed development on the conservation area and on the setting of the listed buildings.
20. The appellant submitted a Planning & Heritage Statement with the application, which was commented upon by Place Services, Essex County Council. The Council's Conservation Area Appraisal and Management Plan indicates that the conservation area is an important example of a medieval planned settlement related to the London to Colchester Road (Newland Street). Some of the medieval half acre plots can still be recognised. Georgian buildings and their facades in Newland Street are particularly important.
21. Having regard to Appeal A, the appeal buildings, and United Reformed Church are identified as landmark buildings in the Council's Conservation Area Appraisal and Management Plan. The proposed vehicular access to the site once formed the route to the house of Lawn Chase. That building was subsequently demolished, and bungalows built at the rear of the appeal site. From the plans included in the Heritage Statement it appears that the proposed site for the new bungalow was mainly open except for the addition of the current out-building. The proposed bungalow would be situated to the rear of the appeal building, which has previously been extended. The bungalow would replace the existing storage building and would be consistent with the form of other adjacent single storey dwellings at Lawn Chase. However, I agree with the finding of Place Services that a reduction in the size of the bungalow would ensure that it would not harm the setting of the listed buildings and would have less impact on the historic openness of the land.

22. I therefore consider that a bungalow of the size proposed would harm the setting of the listed appeal buildings and also the character and appearance of the Witham Town Centre Newland Street Conservation Area, contrary to Local Plan policy RLP 95 regarding the preservation and enhancement of conservation areas and contrary to Local Plan policy RLP 97 concerning changes of use. It would also conflict Local Plan policy RLP 100 which seeks to prevent harm to the setting of listed buildings. In both cases the harm would be less than substantial. However, although an additional dwelling would be created, the public benefits from the proposed bungalow would otherwise be limited and insufficient to outweigh the harm that I have identified.
23. Having regard to Appeal B, Nos.90 and 92 are separately listed and grade II. No.92 is larger, 5 bays wide with a central doorway and shopfronts either side. It dates from the eighteenth century. No.90 is smaller, 2 bays wide and dates from the late eighteenth century. It has a twentieth century shopfront. The adjoining building of No.94, Lawn Cottage is not listed and not part of the proposed development.
24. The built heritage advice from Place Services considers that the Heritage Statement does not fully discuss the internal alterations to the property or justify further changes to the buildings. The Heritage Statement indicates that the layout of the flats has been dictated by the historic fabric of the buildings. The Council did not refer to the effect of the proposal on the internal layout of the buildings in its reasons for refusing listed building consent. However, the officer report indicated that the information and level of detail contained in the Heritage Statement was insufficient to be able to carry out the balancing exercise as required by the Framework.
25. The internal features of the buildings have been altered over time, although the Georgian floorplan and division of space is said by Place Services to remain legible. It is not clear from the Heritage Statement what historic fabric remains or how that would be affected by the proposal. Without that information there is uncertainty whether any features of special architectural or historic interest within the buildings would be harmed, and whether any such harm would be substantial.
26. The Council considers that the proposed shop fronts would detract from the significance of the listed buildings and all three shop fronts should have a unified appearance. However, the fenestration in No.90 does not match that in the larger building of No.92 and there is some rationale in having a different shopfront for that part of the building. The two new shopfronts would also have central doorways. Although Place Services considered that replacing the shop fronts was acceptable, as well as adding pilasters and cornicing, there was concern that it could falsify the history of the building. Nevertheless, I consider that the proposed shopfronts and external changes to Nos.90 and 92 would cause no appreciable harm to the significance of the listed buildings and would preserve the character and appearance of the conservation area.

Conclusion

27. I have taken all other matters raised into account, including Local Plan policy RLP 116 which encourages the use of upper floors of shops in town centres. The proposal would provide a new use for the listed building and create additional residential accommodation which would add to the housing supply.

28. However, I consider that the benefits would be outweighed by the harm that I have identified for the living conditions of future occupants of the proposed flats, potential harm to any historic internal features and layout of the listed buildings and harm to the setting of the listed buildings and conservation area from the bungalow as proposed.

29. For the reasons given above I conclude that the appeals should be dismissed.

Martin H Seddon

INSPECTOR