



Appeal Decision

Hearing Held on 25 May 2021

Site visits made on 16 February 2021 and 15 June 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2021

Appeal Ref: APP/L2820/W/20/3260548 16-18a Horse Market, Kettering NN16 0DQ

- 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 Kettering Cultural Quarter Limited against the decision of Kettering Borough Council.
 - The application Ref KET/2019/0663, dated 19 September 2019, was refused by notice dated 23 July 2020.
 - The development proposed is mixed use development consisting of ground floor commercial unit (A1/A2/B1) and 35 self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was lodged a revised version of the National Planning Policy Framework, 2021 ('the Framework, 2021') has been released, the main parties have been consulted on this and I have taken this into account where relevant to my Decision.
3. A Unilateral Undertaking ('UU') dated 25 May 2021 and made under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted by the appellant after the Hearing. I shall return to this undertaking later.

Background and Main Issues

4. The Council's first reason for refusal refers to the effect of the scale and design of the proposal. However, based on the signed Statement of Common Ground ('SoCG') and discussions at the Hearing, the Council has confirmed that matters of design could be dealt with by a condition requiring details of materials, if the appeal were to succeed.
5. Although the Highway Authority initially raised a number of highway, access and parking related matters in respect of the proposal, based on the SoCG and discussions at the Hearing, the Council's only remaining concern relates to the provision of appropriate pedestrian and vehicular visibility splays from the proposed vehicular egress.
6. The Council's third reason for refusal relates to the failure of the scheme to deliver affordable housing and community infrastructure. However, the appellant's Financial Viability Appraisal concludes that financial contributions required for affordable

housing and community infrastructure would render the proposal unviable. Instead the appellant has agreed to transfer land to the Council for planned highway improvements near the appeal site. At the Hearing the Council's representative acknowledged that given the strategic importance of the proposed highway improvements which could not be delivered without third party land, the Council was only seeking to secure the transfer of land for highway improvements. This, and the above matters were agreed by the main parties at the Hearing, and I have not been given any clear reason to take a contrary approach.

7. Accordingly, the main issues are:

- a) the effect of the scale of the proposed building on the setting of an adjacent listed building and whether it would preserve or enhance the character or appearance of the Kettering Conservation Area ('CA');
- b) the effect of the proposed vehicular egress on highway safety; and,
- c) whether the proposal makes acceptable provision for the transfer of land required for highway improvements.

Reasons

Character and appearance and heritage assets

- 8. The appeal site comprises a vacant plot with a broadly rectangular footprint which is bound by Horse Market to the west, Queen Street to the north, Victoria Street to the south with a car sales plot beyond this, and a surface car park to the east.
- 9. In the vicinity of the appeal site, the buildings are in a variety of forms and styles but predominantly two to three-storey. The nearby surface car park, car sales plot and the public open space of Horse Market provide gaps in an otherwise tight grain urban built form.
- 10. To the south east of the site is the Dalkeith Works, this is a Grade II listed building located on Green Lane. It is a large three-storey imposing building, set at the back edge of the footway within an area of mainly smaller scale residential terraces. Its significance is largely derived from its historic form and particular architectural features. Due to the closeness of the built form of the surrounding area, an appreciation of the architectural importance of Dalkeith Works is mainly available from Green Lane itself, and to some extent in views from Queen Street and Horse Market. Consequently, its surroundings also make some contribution to its setting and its significance.
- 11. The front part of the appeal site adjacent to Horse Market sits within the Town Centre sub area of the Kettering CA. The document titled 'Kettering Conservation Area' ('KCA') provides an appraisal of the CA and describes this part of the CA as the historic core and southern half of the old town centre. The town centre buildings and street pattern reflect their medieval, market town origin. Based on this and my observations, the significance of the CA is derived from the architecture of its traditional buildings their prevailing scale and street patterns.
- 12. Being vacant and secured by hoardings, the site makes a negative contribution to the CA and the character and appearance of the area. The KCA notes that sites to the east of Horse Market would provide a unique opportunity for development which could contribute positively to the town centre and restore the sense of enclosure to the Horse Market. Furthermore, Policy 22 of the Kettering Town Centre Action Plan

2001-2021 ('AP') allocates the site for commercial development with an active frontage at ground floor level.

13. Nevertheless, the siting of the building adjacent to Horse Market, means that it would be highly visible and prominent in the street scene. This proposed six-storey building with a height of about 17m would be taller than the majority of buildings nearby. This, in combination with its overall width and depth would present a visually dominant and incongruous structure within the area. The adverse impact of the overall scale of the building would be exacerbated by the site's prominent position and its immediate surroundings, the car park and car sales plot, which are free of any substantial development. Such a dominant building would also visually compete with Dalkieth Works from nearby views. Thereby resulting in some harm to its significance.
14. The scale of the building would also be contrary to the Council's Urban Code Supplementary Planning Guidance which is a framework to guide development within the various designated Quarters of the town and envisages buildings of a maximum of four storeys in height within the Silver Street Quarter.
15. In support of the proposal, the appellant has referred to other schemes for development at the appeal site. These include a consented scheme for a four-storey hotel with a height of about 14m (Ref KET/2014/0546).
16. In considering an appeal against refused planning application Ref KET/2017/0381, for a five-storey building comprising 51 apartments at the site, although the Inspector noted that this would only be about 1.9m above the height of the approved hotel, that appeal was dismissed. In any event, the scale and height of the building in the dismissed appeal is not comparable to the proposal before me.
17. Planning application Ref KET/2018/0525, is for a 5-storey building with a rooftop garden. Based on the discussions at the Hearing, planning permission for this scheme is still pending subject to the completion of S106 Agreement. Notwithstanding this, the application is for outline planning consent with all matters, including scale reserved.
18. The submitted Visual Impact Analysis illustrates a multi-storey building on land to the north of the appeal site, approved under planning permission (KET-2007-0517). At the Hearing the Council's representative confirmed that this planning permission had lapsed and was for a building which was of a lower height than the building before me. Therefore, these schemes do not set a precedent for a building of the height and scale proposed.
19. For the above reasons, the proposal represents an incompatible scale which would harm the character and appearance of the CA and the setting of a listed building. The harm the proposal would cause to the significance of these heritage assets would be less than substantial. Paragraph 202 of the Framework, 2021 states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
20. The construction of the building would derive economic benefits, and both the AP and the KCA identify the site for redevelopment, to contribute to regeneration and improve the quality of the area.

21. The development would contribute 35 residential units within an accessible, brownfield location towards the Council's housing supply. I have not been advised as to whether the Council has a five-year housing land supply or not. However, there is nothing in the Framework, 2021 to suggest that the existence of a five-year housing land supply should be regarded as a restraint on further development. In this context, I attach considerable weight to the social and economic benefits identified based on the scale of development proposed and its location.
22. Despite finding the harm to the heritage assets to be less than substantial, in accordance with Paragraph 199 of the Framework, 2021 I still attach great weight to this. Therefore, and having special regard to the desirability of preserving or enhancing the character or appearance of the CA¹ and preserving the setting of a listed building², despite having given considerable weight to the public benefits identified in this instance, they are not sufficiently forceful to outweigh the less than substantial harm that I have identified.
23. Consequently, the proposal would be in conflict with Policies 2 and 8 of the North Northamptonshire Joint Core Strategy 2011-2031 adopted in 2016 ('JCS'). Together, amongst other things, these Policies require that development achieves well-designed places that create a distinctive local character by responding to the site's immediate and wider context and sustain and enhance heritage assets.

Highway safety

24. The proposed vehicular egress would be from the building's under-croft parking area onto Queen Street. Despite the Council's plans to facilitate two-way traffic along this road, I have no detailed drawing showing the final arrangement for this. Therefore, I have determined the appeal on the basis of the present highway arrangement.
25. Vehicular traffic outside the location of the proposed egress, travels one way, east to west towards Horse Market. Drivers travelling along this part of the road are generally reducing speeds as they approach the traffic-light controlled junction with Horse Market. This section of the highway is also relatively straight, and the building would be set back from it. Therefore, drivers leaving the proposed egress would have sufficient sight of vehicles approaching from the east. The egress would also be about 7m wide, enabling drivers to see pedestrians emerging from either side of it.
26. To prevent vehicles entering the proposed car park from Queen Street, 'Alligator Teeth' are to be installed along the egress. This physical feature combined with the modest size of the car park would mean that drivers of vehicles leaving this would do so cautiously and at low speeds. Also, the car parking area would accommodate a modest number of vehicles (8). This, together with the town centre location of the appeal site and its good accessibility to a range of facilities including public transport, means that the activity associated with the car park and its egress is likely to be limited.
27. In light of the above site-specific circumstances, whilst the required pedestrian and vehicular visibility splays have not been shown, the proposed egress arrangement would not unacceptably compromise the safety of pedestrians and vehicles using the highway. Consequently, the proposal would not conflict with the overarching highway safety aims of Policy 8(b) of the JCS.

¹ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

² Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Land for highway improvements

28. The proposed building would be set back from the junction of Queen Street and Horse Market to provide sufficient land for the Council's planned highway improvements along Queens Street to accommodate two-way traffic.
29. When determining the appellant's application, the requirement for land to support highway improvements was not identified by the Council. Nevertheless, this is outlined and supported as one of a number of key road and junction improvements under Policy 7 of the AP, which also states that developer contributions will be sought towards these highway improvements.
30. At the Hearing I was referred to the Kettering Town Transport Strategy, January 2015, which also identifies highway improvements along Queen Street. The Council's representative confirmed that some of the road improvements had been undertaken and others were dependant on land availability. I am also mindful that the proposal would result in some increase in vehicular and pedestrian activity in the area.
31. For the above reasons, the provision of land for highway improvements meets the tests laid out at Paragraph 57 of the Framework, 2021 and set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and therefore is appropriate.
32. The mechanism intended to secure the transfer of land for highway improvements is the submitted UU. However, whilst some details including a Title Number have been provided from HM Land Registry, there is no accompanying plan showing the extent of land ownership to which these relate to. Furthermore, although the 'Schedule' to the UU sets out the developer's obligation to transfer to the Council the land edged blue in the attached plan, on the attached plan this is not edged blue. More significantly, there is no trigger or date for when the land transfer would take place. Drawing on these reasons, I cannot be certain of the effectiveness of the UU to ensure the timely transfer of land required for highway improvements. As such, I find conflict with Policy 10 of the JCS which supports the timely delivery of infrastructure, services, and facilities necessary to meet the needs arising from the development.

Other Matters

33. Because the Council is not pursuing the requirement for affordable housing provision, I find no conflict with Policy 30 of the JCS insofar as this relates to affordable housing.

Conclusion

34. I have found that that the proposal would not harm highway safety. On the other hand, it would result in harm to the character and appearance of the CA and the setting of a listed building and fails to secure the timely transfer of land required for highway improvements. For these reasons and conflict with the development plan, I conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Adekoyejo Odunaiya

FOR THE LOCAL PLANNING AUTHORITY

Mr Richard Marlow

DOCUMENTS SUBMITTED AFTER THE HEARING

Unilateral Undertaking dated 25 May 2021
Kettering Town Centre Transport Strategy, April 2011
Kettering Town Centre Transport Strategy, January 2015
Kettering Conservation Area (As revised 30 March 2007)