



Appeal Decision

Site Visit made on 26 October 2021

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 17 November 2021

Appeal Ref: APP/M0655/W/21/3278713

Land adjacent to 137 Kingsway North, Warrington WA1 3NX

- 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 Emerald Bay Construction against the decision of Warrington Borough Council.
 - The application Ref 2020/36525, dated 5 February 2020, was refused by notice dated 13 May 2021.
 - The development proposed is a new build apartment scheme, comprising of 6 apartments and associated landscaping and parking arrangements.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development on the character and appearance of the area.
 - The effect of the proposed development on the living conditions of the residents of 135 and 137 Kingsway North, with particular regard to outlook, privacy, noise and disturbance.
 - The effect of the proposed development on highway safety.

Reasons

Character and Appearance

3. The appeal site is irregular in shape and comprises part of the side and rear garden area of 137 Kingsway North, and a piece of grassed land to the south of this two storey hipped roof semi-detached dwelling. Although the southern boundary of the site is bounded by open land and is enclosed by a number of mature trees this section of Kingsway North is predominantly residential comprising two-storey semi-detached hipped roof dwellings, that are of similar size, scale and design. They have largely regular plots that follow broadly linear building lines resulting in a well ordered layout and appearance.
4. Whilst the proposal would be taller than the neighbouring properties, views of it from the south would be filtered and partly screened by the tall mature trees and established landscaping that bound this side of the site. As it would be sited adjacent to a long row of semi-detached houses the proposed building would also serve as a bookend to this part of Kingsway North without appearing unduly prominent due to it being seen against the backdrop of the

tall dense vegetation from the north. In this regard, the proposal would therefore not be overly dominant when compared to the other properties that can be seen in the same views.

5. The siting of the proposed building would also ensure that the established building line along this part of the highway would not be broken. Furthermore, the distance between it and the gable elevation of No 137 would be similar to the majority of the gaps found between the other semi-detached properties in the immediate area. Therefore, although it would have a larger footprint than the majority of the neighbouring properties in the area, the appeal site is wide enough to accommodate the footprint of the proposed building without it appearing cramped or disproportionate in its context.
6. Nonetheless, the proposal would result in a significant reduction in the size and floor area of No 137's plot. This would include the loss of some of the space to the side of this property to make way for the proposal's driveway and the subdivision of approximately half of its back garden area to provide three of the proposed car parking spaces.
7. I have had regard to the plot area figures within the appellant's plot density analysis table (Figure 1) and appreciate that the size of the dwellings and their respective plots may not be identical. However, on my site visit I saw that Nos 99 and 123 did not have the irregular shaped plots shown in Figure 2 of the appellant's evidence. Instead, like the majority of the neighbouring residential plots, they have relatively straight rectangular shaped curtilage areas that include a front and back garden area and side driveway. I also noted on my site visit that a number of the properties that were listed as not having outbuildings in Figure 1 did have some form of outbuilding. As such I am not convinced that the plot area figures provided for Nos 99 and 123, or the plot density percentages set out for a number of the properties listed are accurate.
8. Moreover, based on my site observations, No 137's resultant plot size would be significantly smaller and narrower than the neighbouring plots along this stretch of the road. Such an arrangement would appear contrived, uncharacteristic and at odds with the predominant layout and prevailing pattern of residential plots and development in the area.
9. As such I find that the proposed development would harm the character and appearance of the surrounding area. It would thereby conflict with Policy QE7 of the Local Plan Core Strategy 2014 (Local Plan) which seeks, amongst other matters, to ensure a high quality place through proposals that are designed to enhance the character, appearance and function of the street scene, local area and wider townscape. Conflict would also arise with advice contained in the Council's Supplementary Planning Document entitled 'Design and Construction' 2010 (SPD1), which highlights the urban grain, and pattern of the arrangements of street blocks, plots and other buildings in a settlement as one of the most important characteristics of development form. In addition, it would also fail to accord with the design objectives of the National Planning Policy (the Framework), specifically Section 12.

Living Conditions

10. Although the proposal would project around 6.5 metres beyond the two storey rear elevation of No 137 it is uncontested that it would also be set away from

the shared boundary with this property by approximately 4.4 metres, and a gap of approximately 5.5 metres would be maintained between these buildings.

11. Given the degree of separation, and the oblique angle between the proposal and the ground and first floor rear windows within No 137 I do not consider that the size, scale and extent of the built development along the southern side of this neighbouring property would appear overbearing or have an imposing effect on its residents. For the same reasons it would not result in a substantial amount of overshadowing or loss of light.
12. There would also be openings within the ground, first and second floors of the northern side elevation of the proposal that would face the shared boundary with No 137, and the rear garden areas of this property and No 135. However, the submitted plans show the proposed ground and first floor windows to serve non habitable wet rooms. As such a suitably worded planning condition could ensure that they are obscurely glazed.
13. The bedroom in plot 6 would be served by a single rooflight and although views to the north would be possible when standing, the rooflight would sit within the angled second floor roof slope. Given its slanted angle and loftiness, in addition to its likely raised cill height and small size much of the outlook from it would be of the sky. Whilst there would also be a central glazed opening within this side elevation, it would serve a non habitable circulation hallway area that would be set back from the main wall of the proposal. Only a very small part of this opening protrudes past the two storey rear elevation of No 137 and it would also partly face this neighbouring property's single storey rear outrigger. The majority of the views of the rear garden areas from this central opening would therefore be obscured and at an acute angle. In light of all of the factors above, the proposal would therefore not have a materially unacceptable effect on the living conditions of the occupiers of No 137 and 135 through direct or perceived overlooking.
14. Nonetheless, three of the proposed six off street car parking spaces would be located adjacent to the rear garden areas of No 135 and 137. Vehicular access to this area would also be via a narrow driveway between the proposed building and No 137. On my site visit I noted that No 137 has a number of openings located within its side and rear elevation, including a single storey outrigger, which are in close proximity to the access road and the proposed rear parking area. I also saw that along with a first floor rear window No 135 has a projecting single storey outrigger that contains a window and patio doors.
15. The occupation of the proposed building by at least six unconnected tenants would inevitably lead to a number of comings and goings. In my view, the noise from these comings and goings, and the manoeuvring and parking of vehicles, which includes disturbance from car engines, car audio systems, slamming of doors and people conversing, at such close proximity to No 135 and 137 side and rear windows and back garden areas, would cause material harm to the living conditions of its residents. This would especially be the case if neighbouring occupiers would want to open these openings for ventilation during the day or night.
16. There is little evidence before me to demonstrate that the proposed or existing boundary treatment would provide suitable mitigation to overcome this harm. Whilst I also appreciate that the occupiers of No 137 do not consider the

proposal to be objectionable in this regard, this is not a determining factor in the consideration of an appeal. The question is whether there would be unacceptable harm, in respect of noise and disturbance, even if objections have not been lodged.

17. As such I find that the proposed development would cause significant harm to the residents of 135 and 137 Kingsway North, with particular regard to noise and disturbance. It would thereby conflict with Local Plan Policy QE6 which only supports development that would not lead to an adverse impact on the environment or amenity of future occupiers or those currently occupying adjoining or nearby properties. Amongst other things, this includes the effects of noise and disturbance. It would also not accord with paragraph 130 of the Framework which requires a high standard of amenity for all existing and future users.

Highway Safety

18. It is uncontested that for developments of more than five dwellings outside a town centre the Council's Standards for Parking in New Development Supplementary Planning Document 2015 (SPD2) advises that eight car parking spaces are required. Nonetheless, where developers are unable to accommodate the preferred parking standards Appendix D of SPD2 offers a combination of allocated or unallocated spaces in accordance with its alternative standards. For one bed flats this can be 1 allocated space, or 1 allocated space plus 0.3 unallocated spaces or 2 allocated spaces per dwelling.
19. The proposal provides 1 allocated space per flat and therefore complies with the SPD's alternative standards. There is nothing conclusive before me to suggest that these standards are tailored towards new residential areas, and whilst I appreciate that the site is located adjacent to a 'Red Route' little substantive evidence regarding accidents or on-street car parking levels in this location has been provided by either main party.
20. At the time of my mid-morning site visit it was apparent that although there was some on-street parking there was ample space available along the Kingsway North highway to accommodate additional cars. I appreciate that this is only a snapshot in time, and that this situation may change at busier peak times during the evening and weekends, when there is likely to be a greater demand for parking. However, in the absence of any firm evidence put forward by both parties, it gives an indication of the level of on-street car parking and available off street parking during this time of the day.
21. Moreover, I am mindful that the Council's Highway Authority has raised no formal objections to the level of off street car parking provision for the proposal or No 137. They have also not raised any concerns in respect of the potential for cars parked on the highway to displace servicing or obscure visibility splays, or to the site's proximity to the roundabout in its consultation response to the original application. Furthermore, the Highway Authority was satisfied that given the small scale nature of the proposal, for one bedroom flats, the majority of the parking is likely to be able to be accommodated within the site, with any overspill likely to be limited and infrequent. I have no substantive reason to disagree with any of these views.
22. As a result of all of these factors, I am satisfied that any modest increase in on-street parking as a result of the proposal would not appreciably compromise

highway safety. As such no conflict would arise with Local Plan Policy QE6 which requires the Council to take into account the effects of traffic movements on highway safety, including car parking. This is broadly consistent with Paragraph 110 c) of the Framework which seeks to ensure that the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code.

23. Paragraph 111 of the Framework also indicates that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or if the residual cumulative impacts on the road network would be severe. For the reasons given above the proposal does not conflict with this advice.

Other Matters

24. I have been made aware that the application was originally recommended for approval, following positive pre-application advice and the submission of amended plans. However, these factors have not had any bearing on my decision as I have only had regard to the planning merits of the proposal that is before me.

Planning Balance

25. The Council accepts that it is unable to demonstrate a 5 year deliverable supply of housing land and I have been made aware of the Housing Delivery Test results for Warrington. Its 3.4 year supply represents a substantial shortfall. The relevant policies of the development plan are therefore deemed to be out of date and, in light of Paragraph 11 d) ii) of the Framework, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
26. I have found that the proposed development would be harmful to the character and appearance of the area and the living conditions of the occupiers of Nos 135 and 137, in respect of noise and disturbance. These harms would be wide ranging and long lasting and would be contrary to the aims of the Framework that I have referred to above. With these factors in mind, I ascribe these matters substantial weight. My findings on the third main issue of this case would amount to a lack of harm and would thus be neutral in any balancing exercise.
27. I have also been made aware that the site is not located within a conservation area and that there are no listed buildings or protected trees on or in close proximity to it. The appellant has put forward that the proposal would be an efficient use of land, in a sustainable location, and that there would be no harm to the living conditions of future occupiers. I am also aware that the Environment Agency withdrew its objections in respect of flood risk and that although the site forms a part of the Twiggeries Local Wildlife Site it no longer supports any habitats of substantive ecological value. The Council's Ecology Officer subsequently raised no objections to the proposal. However, these matters did not appear to be contentious in the appeal and would therefore also be neutral factors which accordingly cannot, by definition, be used to weigh against harm.

28. Nonetheless, as the proposed development is for six apartments, it would make a contextually modest contribution to the Council's housing supply. With this in mind, I attach moderate weight to the appeal scheme's benefits. As such, and bringing matters together, the adverse impacts of granting planning permission would, in this particular case, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the appeal scheme would not be sustainable development for which the presumption in favour applies.

Conclusion

29. For the reasons given above, having taken account of the development plan as a whole, along with all other relevant material considerations including the provisions of the Framework, the appeal should be dismissed.

Mark Caine

INSPECTOR