
Appeal Decision

Site visit made on 25 February 2022

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9TH March 2022

Appeal Ref: APP/W2465/D/21/3285426

37 Kirby Road, Leicester LE3 6BD

- 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 J Rai against the decision of Leicester City Council.
 - The application Ref 20211406, dated 14 May 2021, was refused by notice dated 7 September 2021.
 - The development proposed is the erection of outbuilding to the rear with landscaping and boundary wall treatment.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The Council's decision notice refers to Melton Avenue in the third reason for refusal. This reference appears to be an error because the address of the properties adjacent to one side of the site is Merton Avenue. I have proceeded on that basis.

Main issues

3. The main issues are the effect of the proposed development firstly, on the character and appearance of the local area; secondly, on land instability; and thirdly, on the living conditions of the occupiers of 20-30 (even) Merton Avenue, 31-43 Kirby Road (odd) and 23 Church Avenue with regard to potential noise and general disturbance.

Reasons

Character and appearance

4. The proposal is to erect a detached outbuilding on a parcel of undeveloped land to the rear of 37 Kirby Road, which is a mid-terrace property within a tightly knit built-up area. The new addition would be single storey with a flat roof and a covered outdoor area to one side. Access to the site would be provided from the existing footpath to the rear of the terrace of which No 37 forms part.
5. The proposal would be a sizeable addition with a lengthy front elevation and a footprint similar in size to that of the main dwelling. Coupled with its solid form of construction, with substantial concrete and brick walls, and extensive glazing, the scale, bulk and general appearance of the proposal would be atypical of smaller and less substantial outbuildings typically found to the rear of residential properties. For these reasons, the proposal would draw the eye

particularly from the upper windows of several properties surrounding the site as uncharacteristically large development within a compact residential setting.

6. Given the scale of the new building, its limited connection to the main house and the potential ability for pedestrians to access the site separately to the existing property, the Council considers that the appeal scheme is tantamount to a new dwelling. However, that is not how the new development is described on the application form and the appellant has reiterated that would be used as a recreational facility, ancillary to the existing dwelling. The use of the outbuilding could also be restricted through the imposition of a condition.
7. On the other hand, the new building and the covered outdoor area would be substantial with sufficient space to provide facilities within and around it potentially for independent use by a separate household. Once in place, there could be a request to use the outbuilding independently in the future. A new self-contained single storey flat roof dwelling nestled into a plot at the back of No 37, surrounded by neighbouring properties, would be incompatible with the prevailing pattern of development locally, in which 2-storey housing that directly addresses the main highway predominates. It is not certain that this option would come to pass but the possibility that it might, adds to the objection that I have identified.
8. On the first main issue, I conclude that the proposed development would cause significant harm to the character and appearance of the local area. As such, it is contrary to CS Policy 3 of the Leicester City Core Strategy, which states that development must respond positively to the surroundings and be appropriate to the local context. It is also at odds with the policies of the National Planning Policy Framework (the Framework), which note that development should be sympathetic to local character and add to the overall quality of the area.

Land stability

9. Significant earthworks are proposed including excavation of the site to lower the existing ground level by over 2-metres. Given the proximity of the excavation envisaged and construction works close to existing residential properties, it would be prudent to ensure that both the risk and effects of any potential land instability on property and people are minimised. However, few details have been provided of local ground conditions and how these might be affected if the development were to come forward.
10. The Framework states that planning decisions should ensure that a site is suitable for its proposed use taking account of any risks arising from land instability arising from, for instance, former activities such as mining. A failure to do so could result in subsidence or ground heave with potential harm to the health and safety of people and damage to property.
11. Against that policy background, I am unable to conclude on the available evidence that the site is and will remain stable or could be made so as part of the development. To my mind, it would be inappropriate to impose a condition that would require that an appropriate land stability risk assessment be carried out since whether the development is acceptable is partly dependent on the outcome of that exercise.
12. On the second main issue, I conclude that there is insufficient information to confirm that the site is suitable for its proposed use taking account of potential land instability. As such, it is contrary to the Framework.

Living conditions

13. Of the properties that are close to the site it is the occupiers of 20-30 (even) Merton Avenue, 31-43 Kirby Road (odd) and 23 Church Avenue that are most likely to be affected by the proposal. These properties surround the site.
14. It is possible that the activities associated with the use of the new outbuilding, including the comings and goings of users, would cause some additional noise and disturbance to the occupiers of these nearby properties. However, I doubt that the level of activity would be significantly greater than that generated by the reasonable use of the outdoor space of nearby properties. Taking into account that the noise levels resulting from such activity are likely to be what could be reasonably expected in a dense residential area such as this, the occupiers of these nearby properties would not experience any greater harm from noise and general disturbance because of the proposal.
15. On the third main issue, I conclude that the proposed development would not materially reduce the living conditions of the occupiers of nearby properties. As such, it does not conflict with Policy PS10 of the City of Leicester Local Plan 1996-2016 insofar as it aims to safeguard residential amenity. This finding does not outweigh the significant harm that I have identified in relation to the first and second main issues.

Other matters

16. The appellant is deeply critical of the Council's handling of the application and its failure, in his view, to take a proactive approach; to highlight concerns ahead of the decision to refuse planning permission; to impose conditions to overcome the objections raised; or to ask for more information. The procedures adopted by the Council for determining planning applications are generally a matter for the authority within the context of local government accountability. My remit is solely to determine this appeal, which I have done on its own merits, taking into account all the submitted evidence.

Conclusion

17. For the reasons set out above, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR