



Appeal Decision

Site visit made on 25 April 2022

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Appeal Ref: APP/A2470/W/21/3285313

Land to rear of 35 Main Street, Empingham LE15 8PR

- 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 Russon Campbell Developments against the decision of Rutland County Council.
 - The application Ref 2021/0997/FUL, dated 26 July 2021, was refused by notice dated 7 October 2021.
 - The development proposed is for the demolition of detached garden outbuildings and boundary fence and construction of new detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During my visit I observed that 35 Main Street (No 35) is currently being rebuilt. Its replacement will be a two-storey dwelling with rear facing windows that would overlook the site over its rear garden.

Main Issues

3. The main issues are:
 - Whether the proposed dwelling would preserve or enhance that character or appearance of the Empingham Conservation Area (ECA) and/or preserve the setting of 2/4 and 4 Crocket Lane (No's 2/4 and 4) both grade II Listed Buildings and the effect of development on the character and appearance of the area,
 - the effect of the proposed dwelling on the living conditions of neighbouring and future occupiers, with particular respect to outlook, daylight, sunlight and privacy,
 - the effect of the proposal on highway safety, with particular regard to the on-site turning and the use of the access, and
 - the effect of the proposed development on trees and wildlife.

Reasons

Character and appearance

4. The settlement is a relatively small village, with most development following Main Street, Church Street and Audit Hall Road. The ECA is drawn around the central parts of the settlement, principally following Main Street and Saint

Peter's Parish Church. Housing within the settlement includes a variety of styles, although these are largely traditional in form. Dwellings along Main Street are predominantly behind short walls and hedges and are recessed from the highway. This creates a pattern of development with a wide and open character along most of Main Street. Development along adjacent side roads, including Crocket Lane, shows a greater variety of plot sizes, styles and dwellings that form staggered building lines. The appeal site is an undeveloped parcel of land that includes trees within its frontage. Consequently, although enclosed by fencing, the site contributes to the area's spacious and verdant appearance. Consequently, the site makes a positive contribution to the character and appearance of the area.

5. In accordance with my statutory duty¹ I am required to pay special attention and have regard to the desirability of preserving the setting of listed buildings. No 2/4 is a two-storey thatched roof dwelling with a traditional design. Its significance appears to derive from its rural character and group interest in comparison to nearby similar dwellings. The proposal would crowd the neighbouring heritage asset with a prominent form of development. The surrounding tree cover creates a subdued setting for this building projecting and the proposed front wing of the building would be located away from the shared boundary. Nevertheless, the proposed dwelling would be a bulky and obtrusive addition to this setting having a harmful effect on the setting of the listed building.
6. No 4 is a large two storey dwelling that stands perpendicular to the highway. It originates from the late C17 and consists of coursed rubble stone, moulded stone and brick stacks. Its significance seems to derive from its age, architectural interest and contribution to the surrounding group. This building makes a strong contribution to the street and is prominent in local views. Due to the scale and prominence of the proposal it would intrude into these views within the streetscene and would harm it's setting. The harm conveyed, although partially lessened by distance, would be moderately severe nonetheless.
7. The statutory requirements² also entail that special attention be paid to the desirability of preserving or enhancing the character and appearance of a conservation area. Furthermore, paragraph 199 of the National Planning Policy Framework (The Framework) requires great weight to be given to an asset's conservation when considering the impact of a proposal on its significance. The Council's ECA Appraisal (2014) identifies that the settlement contains over 60 listed buildings and its church originates from C13. The significance of the ECA relates to its traditional rural character in a countryside setting and its number of historic buildings.
8. The site makes an important contribution to the open character of Main Street due to its spacious character. The character is especially evident due to its setting within Crockets Lane and being close to the junction of Main Street. Therefore, whilst being enclosed by fencing the site is nonetheless highly visible in the streetscene and makes a positive contribution to its setting within the conservation area.

¹ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

² Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

9. The proposed dwelling would include two connected elements. The first would have a similar front building line as No 2/4, whilst the second element would be perpendicular to this and project towards the front of the site. This second element would be extensive and project almost to the front boundary of the site. The overall scale and design of the building combines the approximate shapes and forms of dwellings found locally. By combining these local examples, the proposed design would be a bulky amalgamated form that would be discordant with the scale of local development. The proposal therefore fails to combine layout, form and character in a manner that would represent a well-designed form of development as sought by the National Design Guide.
10. I acknowledge that the dwelling would in part follow the pattern of development of local dwellings, some of which being also perpendicular to the highway. However, these are dispersed amongst development that is otherwise recessed from the highway and are within plots that are mostly wider than the appeal site. In contrast the proposal would be a stark and intrusive addition to the street that would be highly visible from Main Street. This would be discordant in and contrast to the open setting of the site and its surroundings.
11. The form of development proposed would also crowd the site. It would include a disproportionate footprint retaining comparatively small open areas around it, in contrast to the more spacious local development. Therefore, the scale of the proposal would also erode the existing sense of spaciousness between No's 35 and 2/4. This is of particular concern as the Council's ECA appraisal recognises the importance of "the space between buildings [which] allows for mature trees and greenery; giving the village a distinctly soft, open and green appearance". Consequently, the proposal would infill a gap with a dominant form of development.
12. Thus, I find mainly through its overall scale and proximity to the side and front boundaries of the site, the proposal would be an incongruous feature. This would harm the character and appearance of the area and the significance of the FCA. In addition, it would partially obscure views of No's 2/4 and 4 from Main Street and would therefore be a prominent and harmful intervention to the setting of these listed buildings. Consequently, the proposal would not preserve the setting of the listed building. Landscaping, potentially secured by planning condition, would not overcome this harm.
13. Therefore, whilst the appellant's Design and Access Statement fails to identify the significance of the heritage assets, I have found that the proposed dwelling would harm the character and appearance of the area, the significance of the ECA and the setting of the adjacent listed buildings. As such, in terms of its effect on character, the proposal would conflict with policies CS19 and CS22 of the Core Strategy (CS) (2011), policies SP5, SP15 and SP20 of the Site and Allocations Development Plan Document (SADPD) (2014) and the Framework. These seek, among other matters, for development to be sympathetic and make a positive contribution towards the unique character of Rutland's towns and to protect and enhance historic assets and their settings.
14. The harm identified to the ECA would be 'less than substantial'. Paragraph 202 of the Framework, states that where harm to a heritage asset would be 'less than substantial' this should be weighed against the public benefits of a proposal. No clear public benefits have been identified by the appellant. Nevertheless, the proposed dwelling would contribute towards local housing

supply and make a small contribution to the local economy both during and post construction. However, even if considered 'public benefits' these would not outweigh the harm found to the conservation area and adjacent listed buildings, which the Framework identifies as irreplaceable resources.

Living conditions

15. The front projecting element of the proposed dwelling would follow most of the width of the rear boundary of No 35. The proposal would be substantially deeper than the side elevation of a conventional dwelling. This would dominate the views from all habitable rooms and from within the rear garden of No 35. Furthermore, the proposed dwelling would be to the south of No 35. No sunlight or daylight analysis has been submitted. However, access to direct sunlight would be likely to be substantially compromised for large parts of the day and the development would also reduce access to ambient daylight. Due to the depth and overall scale of the proposal, the combined effect of the side elevation of both elements of the proposal would create a dominating and substantively harmful effect from this outlook.
16. Turning to matters of privacy, the ground floor windows of the proposal would be unlikely to afford views towards the garden of No 35 due to the change of levels and proposed boundary fence. Also, the rooflights within the roof-space would provide light above a corridor preventing any overlooking.
17. As a result, for the above reasons, the adverse effect of the proposal on the living conditions future occupiers, in terms of impact on outlook, sunlight and daylight, would be demonstrable and significant.
18. No 2/4 is located to the south of the proposed development and is around one metre lower than the appeal site. The proposed garage would be adjacent to a conservatory located to the side of the neighbouring dwelling. However, it would be single-storey with the proposed dwelling set a modest further distance away from No 2/4. Furthermore, the appeal site is to the north of the neighbour. As such, direct sunlight and daylight gained by occupiers of No 2/4 would not be appreciably reduced by the scheme. Although a number of south facing windows are proposed, these would only provide views of the neighbouring garage and front garden. Therefore, whilst some overlooking would take place, this would be limited and would not result in a material loss of privacy.
19. Adjacent neighbouring occupiers, including those of 1 Crocket Lane, would be unlikely to suffer substantial harm to their living conditions due to the separation distance and orientation of dwellings from the proposal.
20. As a result, the proposed dwelling would demonstrably harm the living conditions of future occupiers of No 35 in regard to outlook and loss of daylight and sunlight. Accordingly, the proposal would conflict with policies SP5 and SP15 of the SADPD with respect to impact on living conditions. These seek, inter alia, for back-land development to ensure that amenity is safeguarded through adequate separation and design and to protect neighbouring uses in terms of overlooking and other forms of disturbance.

Highway safety

21. Crockets Lane is a narrow road. It has a footway on one side of part of its length. Front boundaries and the position of some dwellings contribute to a

character of highway which is both intimate and enclosed requiring slow vehicle speeds for motorists to navigate safely. During my visit, whilst only providing a snap-shot in time, I observed only one car parked within Crocket Lane. Most nearby dwellings include on plot parking and this indicates to me that on street parking stress is low. Furthermore, the proposed access would be opposite an existing vehicular access further reducing the opportunity of nearby roadside parking to impede the use of the proposed access.

22. The proposed layout plan shows that a 1.5 metre boundary wall is proposed. This would reduce visibility when motorists exit the site. A reduced boundary could have been subject to a planning condition. However, visibility to the south would remain constrained due to the proximity and height of the neighbour's side boundary fence. As a result, motorists exiting the site would have obstructed views by a close obstruction.
23. Nonetheless, due to the character of the highway and anticipated low traffic levels and its associated low speed this would result in only moderate harm. The Framework advises that development should only be refused if there would be an unacceptable impact on highway safety. Having calibrated the harm as moderate, I find that the use of the access would be similar to local examples. This would not therefore be of sufficient harm as to be deemed to be unacceptable.
24. Furthermore, the submitted layout plan showing parking and a turning head that would allow a vehicle to readily turn around on site. Therefore, despite the absence of vehicle tracking details, the proposed layout would allow vehicles to safely turn within the site and leave in a forward gear.
25. Accordingly, the proposed access would not harm highway safety by virtue of the use of the access or on-site manoeuvrability. Consequently, the proposal would comply with policies SP5 and SP15 of the SADPD in relation to matters associated with highway safety. These seek, among other matters, for development to make safe provision for access by vehicles and to not have an adverse impact on the highway network.

Impact on trees and wildlife

26. The site consists of overgrown lawn areas and a group of trees. The site has become severed from No 35 but appears to have been previously used as part of a domestic garden or orchard.
27. An arboricultural survey has not been undertaken to determine the quality of the trees proposed to be removed. Nonetheless, the group of trees are relatively small and the largest, although providing interest to the street, it not a native specimen. Therefore, the trees on site make a limited contribution to the character of the area. Accordingly, a condition could be imposed, if I had been minded to allow the appeal, that would ensure this loss would be off-set by the provision of new semi-mature trees within the front and rear garden of the site.
28. The site has the potential to include habitats or foraging routes for protected species. However, a phase one habitat survey has not been submitted. Due to an absence of an ecological survey there is insufficient evidence to determine the impact of the scheme on wildlife or for the scheme to provide an adequate bio-diverse uplift.

29. Accordingly, the proposal would fail to comply with policy CS21 of the CS, policy SP19 of the SADPD and paragraph 179 of the Framework. These seek, among other matters, for development to maintain, protect and enhance biodiversity and secure measurable net gains for biodiversity.

Other Matters

30. The site is within the settlement limits of the village. Policy CS4 of the CS supports infill development in such circumstances. Furthermore, policy SP5 of the SAPDPD supports infill schemes if it would be of an appropriate scale and design for its location. As the proposed dwelling would be out of scale with the surrounding pattern of development it would not satisfy this requirement.

Conclusion

31. The proposal would harm the character and appearance of the area, the living conditions of adjacent occupiers, fail to enhance biodiversity and would conflict with the development plan when taken as a whole. Therefore, for the reasons given, I conclude that the appeal should not succeed.

B Plenty

INSPECTOR