
Appeal Decisions

Site visit made on 21 June 2022

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 August 2022

Appeal A Ref: APP/P3040/W/21/3287418

Linden Lea, School Lane, Colston Bassett NG12 3FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission and for relevant demolition of an unlisted building in a conservation area.
 - The appeal is made by Mr Jonathan Good against Rushcliffe Borough Council.
 - The application Ref 21/01309/RELD, is dated 22 April 2021.
 - The development proposed was originally described as 'Demolition of ground floor bathroom and construction of two storey side extension to provide kitchen with ensuite bathrooms and dressing room over. Reconstruction of existing garage to incorporate 'store', to provide 'high bay' camper access. Widening of existing gateway to 12 feet'.
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Appeal B Ref: APP/P3040/W/21/3288443

Linden Lea, School Lane, Colston Bassett NG12 3FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission and for relevant demolition of an unlisted building in a conservation area.
 - The appeal is made by Mr Jonathan Good against Rushcliffe Borough Council.
 - The application Ref 21/01441/FUL, is dated 22 April 2021.
 - The development proposed was originally described as 'Demolition of ground floor bathroom and construction of two storey side extension to provide kitchen with ensuite bathrooms and dressing room over. Reconstruction of existing garage to incorporate 'store', to provide 'high bay' camper access. Widening of existing gateway to 12 feet'.
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Appeal C Ref: APP/P3040/W/21/3289931

Linden Lea, School Lane, Colston Bassett NG12 3FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission and for relevant demolition of an unlisted building in a conservation area.
 - The appeal is made by Mr Jonathan Good against Rushcliffe Borough Council.
 - The application Ref 21/02568/FUL, is dated 9 September 2021.
 - The development proposed is single storey rear extension and a two storey side extension to existing house.
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Procedural Matters

1. As set out above, there are three appeals on the site. Whilst the planning history of the site is relevant to the consideration of all three proposals, I have considered each proposal on its own individual merits. However, to avoid duplication I have dealt with the three appeals together, except where otherwise indicated.

2. The appeals are against the Council's failure to determine the planning applications within the relevant statutory period. The Council's statement of case in respect of each appeal sets out the grounds on which it has resolved to contest the appeals. I have had regard to these grounds in defining the main issues.
3. The proposals in respect of Appeals **A** and **B** were originally submitted under a single planning application but the Council split them into two applications. The Town and Country Planning Act (TCPA) 1990 and Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO) are silent on whether Local Planning Authorities have the power to split proposals made on a single application form.
4. Notwithstanding the above, the proposals under Appeals **A** and **B** were individually consulted upon and relate to two clearly separable elements. Even if the appeals were combined, s.79(1) (b) TCPA 1990 specifically gives me the power to split a decision on a s.78 planning appeal. Therefore, in this particular instance, the conclusions I have reached in respect of Appeals **A** and **B** would be similar even if they were dealt with under a single appeal. Consequently, I am satisfied that no party would be prejudiced by me dealing with Appeals **A** and **B** as submitted.
5. In respect of Appeal **A**, the Council's statement of case refers amongst other things to the demolition of a flat roofed extension. However, this part of the proposals more closely relates to the alterations to the dwelling being considered under Appeal **B**. Furthermore, the Council agreed an updated description with the appellant to 'Demolition of section of boundary wall (to enable widening of existing gateway)'. The publicity carried out in respect of the application which led to Appeal **A** also only referred to 'Demolition of front boundary wall'. I have considered Appeal **A** on this basis.
6. The appellant has confirmed that Appeals **A** and **B** are to be considered on the basis of the plans that were provided to the Council in October 2021 which are labelled as 'Revision 2' (the revised drawings). These drawings show amongst other things a single storey rather than two-storey extension and omit previous proposals to partially demolish and replace outbuildings towards the front of the site.

Decisions

7. **Appeal A** is allowed and planning permission is granted for demolition of section of boundary wall (to enable widening of existing gateway) at Linden Lea, School Lane, Colston Bassett NG12 3FD, in accordance with application Ref. 21/01309/RELDEM, dated 22 April 2021, subject to the following conditions:
 - (1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - (2) The development hereby approved relates to the Site Plan (Scale 1:1250) and the proposals to widen the gateway only, as shown on Proposed Block Plan Drawing Ref. 'LindenBlockApril2021Rev2', and not to the proposed demolition works or extensions connected to the host dwelling as otherwise indicated on this drawing.

- (3) Prior to any gates being erected to the widened gateway, precise details of their design, materials and finish shall first be submitted to and approved in writing by the Local Planning Authority. Once approved in writing, any gates shall only be erected and retained in accordance with the approved details.

8. **Appeal B** is dismissed.

9. **Appeal C** is dismissed.

Main Issues

10. The main issues are:

- (i) Whether or not the proposals in each of Appeals **A**, **B** and **C** would preserve or enhance the character or appearance of the Colston Bassett Conservation Area (CA); and
- (ii) The effect of the proposals in Appeals **B** and **C** on protected species.

Reasons

Whether the character or appearance of the CA would be preserved or enhanced

11. The significance of the CA derives from an overriding rural character both in terms of its buildings and the surrounding landscape. The majority of buildings are located on School Lane and Church Gate with frequent views out towards adjacent fields. The older buildings in the CA mainly consist of a mixture of Georgian and Victorian houses, brick and pantile cottages and barns. Whilst there is variety in the layout of buildings, there is a high degree of cohesion in the design of individual buildings. High brick front boundary walls are a common feature in the area.
12. Linden Lea is recognised in the Colston Bassett Conservation Area Appraisal and Management Plan (2009) as a 'key unlisted building'. The evidence before me indicates that the original two-storey dwelling on the appeal site dates to the 1800s. It has brick facades and various tiled roof coverings including clay pantiles and rosemary tiles. The dwelling sits side on to School Lane. Due to its prevailing linear form, the front elevation has an understated presence in the street and overlooks a spacious side garden. Red brick outbuildings with pantiled roofs sit on a similar linear alignment to the dwelling and adjoin the front boundary on School Lane. A brick wall and timber gates sit along the remainder of the front boundary. Overall, the distinctive form and layout of the buildings on the appeal site make a positive contribution to the character and appearance of the CA and add to its significance.

Appeal A

13. On the basis of the revised drawings, the Council has confirmed that the proposals to partially demolish the front boundary wall to enable widening of the existing gateway would not be harmful to the CA. I agree, that due to the modest extent to which the front boundary wall would be demolished, the proposal to widen the access point would have a relatively neutral effect on the appearance of the street scene.
14. I conclude, the proposal would preserve the character and appearance of the CA. In that regard it would comply with the design and conservation

requirements of Policy 11 (Historic Environment) of the Rushcliffe Local Plan Part 1: Core Strategy (2014) (LPP1), Policy 28 (Conserving and Enhancing Heritage Assets) Rushcliffe Local Plan Part 2: Land and Planning Policies (2019) (LPP2) and Policy D1 (Design) of the Colston Bassett Neighbourhood Plan (2021) (NP). For the same reasons, it would also accord with the heritage requirements of the National Planning Policy Framework (the Framework).

Other Matter

15. A third-party has raised concerns in respect of the potential impact on trees. During my site visit, I saw the existing vegetation within the site, including most notably a mature copper beech tree which sits in close proximity to the proposed widened access. However, only minor works would be required to demolish a small section of the wall. Any excavation required for gate posts would be in the area previously occupied by the wall. The widened access point would also align closely with existing hard surfacing within the site. Therefore, I am satisfied that no significant ground works would be required. In the circumstances, the nearest trees are unlikely to be impacted upon.

Conditions

16. I have attached the standard timescale condition. Given the revised drawings also show proposals relating to the dwelling, it is necessary to attach a condition which defines the extent of the approved development to the gateway proposals.
17. I have also attached a condition requiring precise details of the design, materials and finish of any gates. The appellant has confirmed that a condition relating to any gates is reasonable but has raised concerns about potential expectations in terms of their design. However, in the absence of any detailed plans for gates, a condition is clearly reasonable and necessary in order to ensure any gates positively respond to the character and appearance of the CA.

Conclusion - Appeal A

18. Subject to the above conditions, the development would preserve the character and appearance of the CA. **Appeal A** is therefore allowed.

Appeal B

19. The extension on the revised drawings would necessitate the removal of an unsympathetic flat roofed extension which projects forward of the dwelling's front gable. A catslide roof would be created extending from the existing roof plane. The footprint of the extension would sit close to the existing extents of the dwelling and due to its single storey height would partially be screened from the street by the existing outbuildings. Consequently, the extension would appear as a subservient addition, which would be sympathetic to the scale and form of the host dwelling.
20. I have seen the concerns raised by the Council's Conservation Officer in respect of the appropriateness of the proposed dormers. The appellant's evidence demonstrates that there are several examples of dormers within the CA. This doesn't mean dormers would be acceptable in all instances. However, in this particular instance the dormers are of a modest scale and in views from the street their side elevations would be seen against the backdrop of the dwelling's existing roof slopes. There is also the potential for oblique views of

the dormers through the driveway of the neighbouring property 'The Barn'. However, even in this view the dormers would have a discreet presence and would not be harmful to the appearance of Linden Lea or the street scene.

21. The Council has confirmed within its statement of case that the revised drawings are of an acceptable design. This further persuades me that the proposals would not be harmful to the significance of the CA.
22. I conclude, the proposed extension shown on the revised plans in respect of Appeal **B** would preserve the character and appearance of the CA. In that regard, it would comply with the design and conservation requirements of Policy 10 (Design and Enhancing Local Identity), Policy 11 (Historic Environment) of the LPP1, Policy 1 (Development Requirements) Policy 28 (Conserving and Enhancing Heritage Assets) of the LPP2 and Policy D1 (Design) of the NP. For the same reasons, it would also accord with the heritage requirements of the National Planning Policy Framework (the Framework).

Appeal C

23. The substantial two-storey extension would give the dwelling an L-shaped form. Its roofline would sit level with the dwelling's main roof. These factors would combine to give the dwelling a considerably wider and bulkier profile when viewed from the street. The extension would also incorporate ground and first floor windows facing School Lane giving it a greater perceived hierarchy in the street than its host. As a result, the proposal would detract from the linear form of the host dwelling and would fundamentally alter the established relationship of the dwelling with the street scene. This would be appreciable to passers-by on School Lane in views over the front boundary wall.
24. The single storey extension to provide a kitchen, utility and toilet would elongate the dwelling further into the rear garden. Even so, due to its modest height and closer alignment with the dwelling's existing linear form, it would not be highly discernible from the street and would assimilate with the more subservient appearance of the dwelling's rear elevation. Even so, this does not overcome the harm that would result to the appearance of the host dwelling resulting from the two-storey element of the proposals.
25. The appellant suggests that a previous two-storey side extension already detracts from the symmetry of the dwelling's original form. However, the layout of that particular extension retains the dwelling's linear footprint and is not as discernible from the street as would be the case with the two-storey proposal before me.
26. Paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Paragraph 200 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
27. Taking into account the above factors, the proposal would result in less than substantial harm to the significance of the CA. Paragraph 202 of the

Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

28. The extensions would result in a private benefit for the occupiers of the dwelling in terms of increased habitable space. The appellant suggests that there is evidence of subsidence at Linden Lea. Whether or not this is the case, there is no evidence before me to suggest that such matters could only be addressed through a proposal to extend the dwelling. Overall, there are no public benefits of a sufficient weight to outweigh the less than substantial harm identified.
29. I conclude, the proposals under Appeal **C** would not preserve or enhance the character or appearance of the CA. In that regard the proposals would conflict with the design and conservation requirements of Policy 10 (Design and Enhancing Local Identity), Policy 11 (Historic Environment) of the LPP1, Policy 1 (Development Requirements) Policy 28 (Conserving and Enhancing Heritage Assets) of the LPP2 and Policy D1 (Design) of the NP. For the same reasons, it would also conflict with the heritage requirements of the National Planning Policy Framework (the Framework).

Appeals B and C

Protected species

30. The Framework seeks amongst other things to avoid significant harm to biodiversity. Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System) states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it, "... is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision".
31. The evidence before me suggests that when the Council was considering a planning application in relation to a property opposite the appeal site, the appellant provided photographic evidence of Great Crested Newts (GCN) that were observed at Linden Lea in October 2019. The appellant has not provided any more recent ecological survey information to suggest that GCN are no longer present on the site.
32. Even if the ecological survey work undertaken in respect of the site opposite did not identify any GCN constraints in that instance, there is nothing before me to suggest that Linden Lea was surveyed as part of that work. Given the intervening road, that the appellant has identified that there is a pond at the neighbouring school and the photographic evidence showing GCN at Linden Lea, I cannot rule out that the circumstances for GCN might be different on the appeal site to those surveyed at the site opposite.
33. Given that GCN are a protected species under The Conservation of Habitats and Species Regulations 2017 (2017 Regulations) a precautionary approach should be taken. The absence of detailed surveys means I am unable to assess the

extent to which GCN might be affected and any avoidance or mitigation measures necessary. This conflicts with the requirements of Circular 06/2005.

34. In line with the findings in *Morge*¹ and the requirements in Circular 06/2005 I am required to consider whether there is any reason in principle why a protected species licence would not be granted in the event that GCN are present on the site. In the absence of the further survey work required to demonstrate the extent to which GCNs would be likely to be affected, I cannot conclude with absolute certainty that a licence would be likely to be issued in this instance.
35. The appellant contends that the Council did not request an ecology survey for an adjoining site². Whether or not that is the case, I must have regard to the specific evidence before me in this case which indicates that GCN have been present at Linden Lea.
36. I conclude that it has not been demonstrated that the development under Appeals **B** and **C** would not result in harm to protected species. In that regard the proposals would conflict with the nature conservation aims of Policy 17 (Biodiversity) of the LPP1, Policy 38 (Non-Designated Biodiversity Assets and the Wider Ecological Network) of the LPP2 and Policy ENV 3 (Biodiversity and Wildlife Corridors) of the NP. It would also be contrary to the clear intentions of the Framework and Circular 06/2005 to avoid significant harm to biodiversity and to establish the extent to which protected species may be affected before planning permission is granted.

Other Matters – Appeals B and C

37. The appellant contends that the Council's Conservation Officer was wrong in their original comments to refer to the dwelling as a converted agricultural building. Even so, this does not alter my view that the proposals under Appeal **C** would not be sympathetic to the character or appearance of the host dwelling and the CA. The appellant has also compared the proposal under Appeal **C** with another appeal³. I have not been provided with a copy of this decision. In any case, from the evidence before me that appeal related to an extension to a barn and not a dwelling of the same design, layout or relationship with the CA as Linden Lea.
38. With regards to third-party comments not covered under the main issues, the Council confirmed to the appellant during the processing of the applications that as the outbuilding was no longer proposed to be demolished and that the flat roofed extension was unlikely to contain a bat roost, a bat survey was not required. The evidence before me also indicates that the County Archaeologist confirmed that there is no known record of archaeological interest at the site. There is no objective evidence before me to suggest that I should conclude differently on these particular matters.

Conclusion - Appeal B

39. I have found that the proposals would preserve the character and appearance of the CA. However, it has not been demonstrated that the development would not result in harm to protected species. This is a matter of overriding concern

¹ *Morge v Hampshire County Council* [2011] UKSC 2

² LPA Ref 21/02457/FUL

³ APP/P3040/D/20/3265124

and there are no other material considerations that suggest that the decision should be taken otherwise than in accordance with the development plan, national policy and the statutory obligations relating to protected species.

40. Therefore, **Appeal B** is dismissed.

Conclusion - Appeal C

41. The proposal would be harmful to the character and appearance of the CA. Furthermore, it has not been demonstrated that the development would not result in harm to protected species. In these respects, the proposal conflicts with the development plan as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan.

42. Therefore, **Appeal C** is dismissed.

M Russell

INSPECTOR