



Appeal Decision

Site visit made on 28 June 2022

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2022

Appeal Ref: APP/W2465/W/22/3294631

7-9 Victoria Mews, De Montfort Place, Leicester LE1 7GZ

- 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 Niaz Ussen, Sau Estates Ltd, against the decision of Leicester City Council.
 - The application Ref 20212002, dated 6 August 2021, was refused by notice dated 1st February 2022.
 - The development proposed is described as 1 storey upward extension to create 2 new dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The main parties agree that the Local Planning Authority cannot provide a 5-year housing land supply (5YHLS). Therefore, parties were asked to provide comments regarding the extent of the shortfall. The Council provided some figures, which the appellant has not challenged. I have therefore taken account of these figures in reaching my Decision.

Main Issues

3. The main issues are:
 - the effect of the proposal on the host building, the significance of the South Highlands Conservation Area (SHCA), and the character or appearance of the area, and
 - whether the proposal would provide adequate accessibility and therefore a satisfactory living environment for future occupiers.

Reasons

Effect on host building, significance of the SHCA and character or appearance of the area

4. The site is located within the SHCA and adjacent to the boundary of the New Walk Conservation Area (NWCA). I have a statutory duty¹ to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas (CAs). Paragraph 189 of the Framework advises that heritage assets are an irreplaceable resource.

¹ Under s72(1) of The Planning (Listed Building and Conservation Areas) Act 1990

5. The SHCA derives its heritage interest broadly from its historic development and architectural quality. There are many factors that contribute to its significance, not all are relevant to the appeal. In summary, the key factors of significance relevant to the appeal are the variety and quality of its buildings, some of which are nationally listed.
6. Thus, there is a mix of properties in terms of type, size, and architectural detailing. Notwithstanding, there are unifying features, such as the quality of construction, attention to detail, and the use of local red brick for the construction of walls and grey Welsh slate for roofs. Stone is often used for bay windows, window surrounds and string courses. Some of the buildings have painted stucco, pre-cast concrete and/or marble facings. Windows are predominantly timber; either casements or, more commonly, sliding sash. The variety of texture and colour created by the architectural details and the external materials used add to the significance of the SHCA. There is often regularity and rhythm in aspects such as bay windows, eaves, chimneys, and dormers.
7. As the site is located immediately adjacent to the boundary of the NWCA I consider it lies within the immediate setting of it. However, I believe setting does not constitute part of the heritage significance of the NWCA.
8. The existing building which the appeal site forms part of is a relatively low level, two-storey building that has evidently been extended and altered over the years. Although the building has some identifying features, such as the row of gables, circular windows, and arched openings on the front elevation, and it is constructed primarily of red brick with a grey slate roof, there is not a consistency of design detail across the building's exterior. Thus, gables vary in size and angle of roof pitch; fenestration openings vary in size, and most do not have an arched feature above; there is a flat roof single-storey extension on one corner of the building and flat roof extensions located between some of the roof gullies. I consider the existing building currently has a neutral impact on the SHCA.
9. The proposed second floor extension would only extend across a section of the building to which the site forms a part, broadly around 2 thirds of the building's footprint, as the other part of the building is in a separate use and ownership. The extension would have 2 adjoining gables at the front (as well as 2 at the rear), sited over 2 and a half of the 4 gables that currently exist at the front.
10. Due to the current variations in gable sizes and pitch of roof slopes at the front, the 2 adjoining gables that would be sited above the existing gables would not match either of the gables in respect of width. Additionally, the central gully created, and associated drainpipe, would not line up with the position of the closest central gully and drainpipe that would be below it, on the existing building. The current variations in gable sizes and pitch of roof slopes at the front would be highlighted due to the design of the proposed gables as outlined, and due to the proposed use of dark grey brickwork.
11. The large windows that would be on the front of the proposed gables would not line up with any of the vertical lines of the fenestration openings on the existing building below. The proposed circular windows would be smaller than the existing circular windows, and construction of the extension, along with the use of dark grey brickwork, would highlight that the existing circular window

- located nearest to the north-eastern end of the building is positioned at a lower height than the other 4 circular windows on the front elevation.
12. Except for a brick course around the proposed circular window openings, there would be no arches or any other detailing around any of the proposed window openings. The broadly north-eastern and south-western side elevations would be blank, with no windows or brick detailing etc. to break up the mass of plain, dark grey brickwork.
 13. The proposal includes adding brick slips to the south-eastern facing elevation of the existing single-storey extension, as well as removing paint from brickwork that exists on part of the north-eastern facing elevation. Within the context of the area, ie surrounding buildings of high quality construction, with the use of high quality materials, I consider the use of brick slips as a way of trying to improve the appearance of the property would not be in keeping with either the building, the SHCA or the general appearance of the surrounding area. I accept that the removal of the paint would improve the appearance of the building. However, this would be to a very minor extent. Furthermore, the replacement of poor looking brickwork and removal of paint from brickwork are alterations that could be made to the building without having to extend it as proposed.
 14. One of the key reasons I consider the existing building to have a neutral impact on the SHCA is its low level; it is subservient to the surrounding buildings. I accept that the surrounding buildings are mainly three-storey, many of which have two-storey and/or single-storey outriggers/extensions to the rear. I also note that the appellant considers the appeal property, if extended as proposed, would "*still be dwarfed*" by surrounding buildings. However, the site is located within a prominent position broadly towards the centre of the space that exists behind the existing buildings on London Road, De Montfort Street, New Walk and Victoria Passage; this space consists of the road itself, De Montfort Place, and car parking areas mainly associated with a neighbouring hotel.
 15. Within this context, extending the building upwards by adding a second floor would significantly alter the relationship between the existing building and those surrounding it. Thus, even though the building would not be as high as most of the surrounding buildings, it would no longer appear subservient to them.
 16. Due to the above factors, I conclude that the proposal would detrimentally alter the appearance of the host building from that of being a reasonably coherent, single building, to that of being a sub-divided, disjointed, incoherent building, lacking in design detail, with use of some poor-quality materials. The scale and mass of the proposed extension would alter the relationship of the existing building with surrounding properties in a detrimental way. For the reasons outlined, I also conclude that the proposal would significantly harm the significance of the SHCA and the appearance of the surrounding area generally.
 17. I disagree with the appellant's suggestion that the appeal property is not seen by the public. The property is, and would be, visible from numerous surrounding properties, visitors to the car park, visitors to the adjacent beauty salon and other neighbouring commercial properties accessed from their rear, and passersby using De Montfort Place as a cut through to, for example, London Road and Victoria Passage.

18. I note that Policy CS18 of the Leicester City local development framework: Core Strategy (2010), (CS), encourages contemporary design rather than pastiche replicas. However, contemporary design must still be of high-quality, with the use of high-quality materials, as well as respecting the relationship of the existing buildings with surrounding buildings.
19. I therefore conclude that the proposal would significantly harm the appearance of the host building, the significance of the SHCA and the appearance of the surrounding area. Consequently, the proposal would not preserve or enhance the SHCA. As such the proposal does not accord with policies CS03 and CS18 of the (CS), or design and heritage policies in The National Planning Policy Framework (the Framework), which collectively, and among other things, require developments to be of high-quality design, contribute positively to its surroundings, be sympathetic to local character and history, and protect or enhance the historic environment.
20. Regarding paragraph 202 of the Framework, I consider the degree of harm to the significance of the SHCA would be less than substantial. The Framework advises that such harm should be weighed against the public benefits of the proposal.

Public Benefits

21. As indicated above, the LPA cannot demonstrate a 5-year supply of deliverable housing land. The LPA contend that the level of supply is 3.5 years in relation to the Core Strategy (CS) target and 2.8 years in relation to the Housing and Economic Development Needs Assessment (HEDNA) target.
22. The provision of 2 additional residential units would be a social benefit. The proposal would assist the LPA in meeting the housing needs of the area, all-be-it to a small degree, and it would help to achieve the Government's objective of boosting the supply of housing. Given the extent of the LPAs 5YHLS shortfall, even if I take the lower figure, which I consider to be a significant shortfall, I attach moderate weight to this public benefit.
23. The proposed works would enable the existing first floor ceilings to be raised, which would increase the space within the existing flats. As such alterations would improve the living conditions of existing and future occupiers of the existing first floor flats, they would provide a social benefit. However, the existing accommodation at first floor level is habitable anyway; and given the limited extent to which the proposed changes would improve the living conditions of existing or future occupiers, I attach limited weight to this matter.
24. The proposal would provide economic benefits (which would be of public benefit) during the construction and post construction phases, due to people being employed to carry out the works, the purchasing of materials, and future occupiers contributing to the local economy. Due to their limited scale, I attach limited weight to such benefits.
25. It is asserted that the proposed brick slips would provide improvements to the thermal efficiency of the existing building, as they would contain 50 mm of insulation. Although saving energy would be of public benefit, I consider the extent of any energy saved would be very small; as such I attach little weight to this matter.

26. I have concluded that the extent of harm to the designated heritage asset is less than substantial *vis-à-vis* paragraph 202 of the Framework. Nonetheless, it is of considerable importance and weight; paragraph 199 of the Framework advises that great weight should be given to the conservation of heritage assets, irrespective of the level of harm.
27. As I have found that the proposal would significantly harm the significance of the SHCA, I conclude that the public benefits outlined, neither individually nor collectively, outweigh this harm. Paragraph 200 of the Framework advises that any harm to the significance of a designated heritage asset requires clear and convincing justification. I consider this has not been demonstrated.

Accessibility and living environment – future occupiers

28. Saved policies PS10 and H07 of the City of Leicester Local Plan 1996-2016, (2006), (CLLP)², policies CS03 and CS06 of the CS, and paragraphs 60 and 130(f) of the Framework, collectively, and among other things, seek to ensure development creates places that are inclusive and accessible, meet the highest standards of accessibility and inclusion, provide a high standard of living conditions for future occupiers, and meet the needs of groups with specific housing requirements. Additionally, Policy CS06 of the CS requires that "*an appropriate proportion of new housing units are designed to meet wheelchair access standards*" and, "*where feasible*", new housing units should be "*...designed to 'Lifetime Homes' standards so that they are adaptable enough to match lifetime's changing needs...*".
29. I have not been provided with any definition of what constitutes an "*appropriate proportion*"; nor have I been provided with any details of the number of housing units that have already been granted planning permission since the adoption of Policy CS06 which have been designed to meet wheelchair access standards. Consequently, I do not know if an "*appropriate proportion*" of relevant residential development has already been achieved or not. The Council notes that 'Lifetime Homes' standards are no longer applicable and that these were replaced with the optional building regulations standard M4(2). The Council suggests this is the closest equivalent to the 'Lifetime Homes' standards referred to in Policy CS06 of the CS. I have not been provided with details of the 'Lifetime Homes' standards, nor have I been provided with details of the optional building regulation standard M4(2).
30. Notwithstanding, with the information that has been submitted and the observations I was able to make during my visit to the site, I consider there to be sufficient information to assess the proposal against the relevant planning policies.
31. The proposal is for an extension to an existing building that, as I observed on site, does not currently have a level access into it. Additionally, from the evidence before me there appears to be no lift or stair lift currently in the building. Hence, the current residential units are not accessible to all users, especially those that require a level access and/or a lift to access the first floor.
32. In these circumstances, it seems to me that it is not *feasible* for the proposal to be designed to the *optional* building regulations standard M4(2), as a requirement of planning policy; and that it would be more likely, and *feasible*,

² I consider these policies to be broadly consistent with policies in the Framework in respect of living conditions.

that the Council could secure an "*appropriate proportion*" of new housing units designed with wheelchair access from other, more suitable, housing developments. As such, the Council would be able, overall, to create places that are inclusive and accessible and meet the needs of groups with specific housing requirements.

33. For these reasons, I conclude that the proposal would, given the circumstances of the site, provide a suitable access and satisfactory living environment for future occupiers for which the accommodation would be suitable. The proposal would therefore accord with policies PS10 and H07 of the CLLP, CS03 and CS06 of the CS and paragraphs 60 and 130(f) of the Framework.

Other considerations

34. The appellant points out that the site is located within proximity of a range of services and facilities, including public transport options, and there would be opportunities for walking and cycling. However, as such factors are requirements of local and national planning policies anyway, I do not attribute any additional weight to them to justify the proposal.
35. The appellant contends that the proposal would improve the lifecycle of the building by removing the need to regularly repair the existing roof, which often leaks, and making other structural improvements. It is therefore asserted that the proposal would save the building from further damage, as the leaking roof would not be rectified until the proposed extension was implemented.
36. I appreciate the problems encountered by the appellant regarding the leaking roof. However, constructing the proposed extension would not be the only way of adequately repairing the roof. I have not been provided with any information which demonstrates that constructing the proposed extension would be the only viable way of repairing the roof. I therefore attach limited weight to this matter.
37. I acknowledge that the appeal site is a brownfield site, and the proposal would make efficient use of land. Matters which weigh in favour of the proposal. Given the small-scale nature of the proposal, I attach limited weight to such matters.

Conclusion on main issues

38. Notwithstanding my conclusion regarding accessibility and living environment for future occupiers, I have found that the proposal would significantly harm the appearance of the host building, the significance of the CA and the appearance of the surrounding area generally. I consider that none of the public benefits or other considerations outlined outweigh this harm. I therefore conclude that the proposal does not accord with the development plan when read as a whole.

Whether there is a presumption in favour of sustainable development

39. Paragraph 11 of the Framework advises that "*plans and decisions should apply a presumption in favour of sustainable development.*" For decision-taking this means "*approving development proposals that accord with an up-to-date development plan...or where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless...[among other things]...the application of*

policies in...[the]...Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed...".

40. As noted above, the LPA cannot demonstrate a 5YHLS; consequently, the policies that are most important for determining the application are out of date.
41. However, footnote 7 of the Framework confirms that designated heritage assets constitute assets of particular importance. Therefore, policies in the Framework which seek to protect CAs provide a clear reason for refusing the development proposed. Consequently, the presumption in favour of sustainable development does not apply.

Other Matters

42. The appellant has expressed concerns regarding the validation and processing of the planning application. I consider these are matters between the appellant and the Council and do not affect the determination of the appeal.

Planning Balance and Conclusion

43. Planning law requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise.
44. Notwithstanding the conclusions I have reached regarding accessibility and living environment for future occupiers, I consider the harm to the appearance of the host building, the significance of the SHCA and the appearance of the area, result in the proposal being contrary to the development plan when considered as a whole. I have concluded that the public benefits of the scheme do not outweigh the significant harm to the significance of the SHCA. I have concluded that the presumption in favour of sustainable development does not apply.
45. I consider that there are no other considerations, including the provisions of the Framework, that lead me to conclude other than in accordance with the development plan. For the reasons outlined, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR