



Appeal Decision

Site visit made on 27 September 2022

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal Ref: APP/F2415/W/22/3299581

54 St Marys Road, Market Harborough LE16 7DU

- 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 Mrs K Jones against the decision of Harborough District Council.
 - The application Ref 21/01942/FUL, dated 4 November 2021, was refused by notice dated 8 February 2022.
 - The development proposed is the erection of a three-storey side extension to form a ground floor accessed two-storey maisonette over a vehicular access and all associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development, as detailed in the banner heading above, differs from that in the planning application form. However, the appellant agreed with the Council to change the description during the consideration of the planning application so that it accurately reflected the proposal. I have therefore determined the appeal on this basis.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of the occupiers of Birch House, with particular regard to outlook.

Reasons

4. The appeal site comprises land between 54 and 58/60 St Marys Road that is currently used as an access to a block of residential apartments to the rear, known as Birch House. No 54 comprises a two-storey building plus roof space with a lower ground floor to the rear, a single storey lower ground floor extension that occupies the majority of the rear yard. A two-storey plus lower ground floor extension joins No 54 to No 52. No 58/60 comprises a detached two-storey building with a lower ground floor to the rear. The properties to the side of No 54, along this side of St Marys Road, are of a similar height to No 54 and No 58/60.
5. The land falls from St Marys Road towards the River Welland to the rear. Birch House is a four-storey apartment block whose front elevation faces towards the rear elevation of No 52 and 54 and the appeal site. A car park is sited between Birch House and the properties fronting St Marys Road. The approved plan for Birch House indicates that the windows in the front elevation are bedroom

windows (some of which have Juliet balconies), as well as the central stairwell. The bedroom windows therefore serve habitable rooms.

6. Due to the level changes of around 2.5 metres, the outlook from the bedroom windows within the front elevation of Birch House is enclosed by the height and bulk of the buildings that front onto St Marys Road. But the gap between No 54 and No 58/60 provides relief in terms of built form.
7. The proposed development would comprise a three-storey building positioned within the gap between No 54 and No 58/60. The ground floor would include an entrance to the proposed maisonette from St Marys Road and a vehicle and pedestrian access to serve Birch House. Two-storeys of living accommodation would be positioned above the access. The proposed building would be attached to No 54 and almost entirely fill the existing gap. It would have an eaves and ridge height to match No 54, with a depth that would be equal to the original part of No 54. The proposed development would significantly increase the amount of enclosure to Birch House, particularly those apartments that directly face towards the existing gap.
8. The Supplementary Planning Document 2: Design Principles, adopted 2021 requires a minimum distance of 21 metres between facing windows serving habitable rooms. It goes on to state that the standard will be applied flexibly depending on the individual merits of each site and factors such as, building scale. The distance between habitable windows within Birch House and the proposed development would be around 9m/10m more than the Council's minimum 21m separation distance. However, the height and massing of the building and the effect of the level changes would exacerbate the degree of enclosure and result in an overbearing effect in terms of outlook. Birch House may impact on the outlook from No 52 and 54, but this is an existing effect and does not justify a negative effect in the opposite direction.
9. Table 2.2 of the SPD is titled "distance separation between different storey buildings" and details the required distance that should separate buildings of different storeys, with measurements provided for ground floor habitable windows facing a two-storey and a three-storey structure. No minimum distance is provided for ground floor habitable windows facing a four-storey building, such as the appeal proposal. Furthermore, Figure 2.3 of the SPD details the separation distances whereby habitable windows would face a blank elevation, rather than other habitable windows. None of the measurements detailed in the SPD are therefore applicable to the appeal proposal. The appellant considers that a formula can be applied to the figures in the SPD to devise a separation distance for a four-storey building. However, this is not detailed within the document and therefore it cannot be implied.
10. The appellant notes that some of the windows in the front elevation of Birch House serve bedrooms, rather than living areas. They consider that bedrooms are primarily used to sleep in and therefore they do not require the same level of outlook as other living areas. There is no differentiation between habitable rooms in the SPD. Furthermore, it is not uncommon for bedrooms to be used for dual or separate purposes such as an office, for children to play, to watch television, particularly when the overall level of accommodation is small. Therefore, the level of outlook for a bedroom should not be less than other habitable rooms.

11. A previous planning application¹ at the appeal site was dismissed on appeal² due to the proposal having an adverse effect on the living conditions of the occupiers of Birch House in respect of outlook. Although the refused drawings differ from the appeal scheme in terms of elevational treatment, the bulk, massing and footprint of the building is very similar. Furthermore, the Planning Inspector in that appeal noted that the gap between No 52 and 54 provided relief in terms of built form. This gap has since been infilled with a two-storey extension, with a lower ground floor. Therefore, the level of enclosure experienced by the occupiers of Birch House has intensified since that appeal was dismissed and the appeal site is now the only gap that provides the occupiers with some relief in terms of the built form along St Marys Road.
12. In reference to the main issue, the proposed development would significantly harm the living conditions of the occupiers of Birch House with regard to outlook. Therefore, it would conflict with Policy GD8 of the Harborough Local Plan 2011 to 2031, adopted 2019 (LP), which, amongst other things, requires developments to not have a significant adverse effect on the living conditions of existing residents through an overbearing impact. It would also not accord with paragraph 130(f) of the National Planning Policy Framework, which seeks a high standard of amenity for existing and future users of places.

Other Matters

13. The appeal site is located within the Market Harborough Conservation Area (CA) therefore I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The CA covers the historic core of the market town. St Marys Road comprises a main entry road into the town that is largely occupied by commercial uses to the ground floor with living accommodation above. The buildings are set along the back edge of the pavement and comprise a mix of storeys and materials but are predominantly two-storeys (some with accommodation in the roof space) and constructed of brick. The proposed development would reflect the character of the CA by being positioned along the back edge of the pavement, comprising two-storeys with accommodation in the roof space and constructed of brick. The proposed development would therefore not harm the significance of the Conservation Area; a view that is also supported by the Council's Conservation Officer. As such, it would preserve the character and appearance of the CA. This is a neutral factor that neither weighs for nor against the proposal.
14. The appellant has raised concern with the Council's assessment of the proposed development in the Officer Report and the wording of the reason for refusal, with specific reference to Policy GD8 of the LP. However, my decision is based on an assessment of the proposed development against Policy GD8 of the LP and I have found that it would have a significant adverse effect on the living conditions of the occupiers of Birch House with respect to outlook, for the reasons detailed above. The appellant also considers that the Council failed in its duty to assess the proposed development against paragraph 11 of the NPPF. However, it has not been demonstrated that the Council does not have a 5-year supply of deliverable housing sites or that the relevant policies are out-of-date. Conversely, the Council has not refuted the appellant's assertion. Even

¹ 18/01180/FUL

² APP/F2415/D/19/3220319

if the Council could not demonstrate a 5-year supply of deliverable housing sites, the proposal would provide one additional dwelling, which would provide a limited contribution to the Government's objective of significantly boosting the supply of new homes. The harm I have identified in respect of the effect of the proposal on the living conditions of Birch House would significantly and demonstrably outweigh these benefits.

15. Concerns regarding the Council's handling of the planning application have had no bearing on my consideration of the planning merits of the proposal.
16. The appellant has raised concern about the weight given by the Council to two previously approved and dismissed developments³ at the appeal site. Whilst I agree that application 13/00708/FUL differs from the appeal proposal, I have found that the bulk, scale and massing of the proposed building in application 18/01180/FUL is comparable, for the reasons detailed above. Furthermore, whilst the Officer Report for application 18/01180/FUL was assessed against the now superseded Policy CS11 of the Harborough District Core Strategy 2006-2028, the Planning Inspector⁴ assessed the proposed development against Policy GD8 of the LP, as the LP was adopted by the Council during consideration of the appeal. The Inspector's decision letter refers at paragraph 4, to the appellant having been afforded the opportunity to comment upon the relevant policies of the LP that were provided by the Council. The appellant states that there is no evidence that the Planning Inspector, in determining the appeal in relation to 18/01180/FUL had sight of the internal layout of Birch House. However, the Inspector noted that at least some of the windows in the front elevation of Birch House serve habitable rooms. The approved drawing of Birch House submitted with this appeal supports the previous Inspector's assertions. Therefore, I agree with the Council that significant weight should be afforded to the previous appeal decision⁵.
17. There has been no objection from statutory consultees or relevant Officers in respect of contaminated land, ecology, conservation, and highways. I also note that the Council has not objected to the proposed development in respect of such matters as design, overshadowing, loss of light, or overlooking. However, these are neutral factors. Furthermore, the amount of glazing within the rear elevation of the proposed development has no bearing on my consideration of the main issue and is therefore also a neutral factor.

Conclusion

18. For the above reasons, having considered the development plan as a whole and all other material considerations, I conclude that the appeal is dismissed.

A Berry

INSPECTOR

³ 13/00728/FUL and 18/01180/FUL

⁴ In appeal reference APP/F2415/D/19/3220319

⁵ Appeal reference APP/F2415/D/19/3220319