

Appeal Decision

Site visit made on 25 October 2022

by R C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCI Arb MCIL

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Reference: APP/Z1510/W/22/3293210

Number 111 and Land to the Rear of 111 Newland Street, Witham CM8 1AX

- 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.
 - The appeal is made by East of England Co-operative Society against the decision of Braintree District Council.
 - The application (reference 20/00808/FUL) is dated 14 May 2020.
 - The development proposed is described in the application form as a "residential development, comprising 4 no. dwellinghouses and 3 no. flats, together with associated works and demolition of a single-storey outbuilding".
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Decision

1. The appeal is allowed and planning permission is granted for "residential development, comprising 4 no. dwellinghouses and 3 no. flats, together with associated works and demolition of a single-storey outbuilding", on land at (and to the rear of) number 111 Newland Street, Witham CM8 1AX, in accordance with the terms of the application (reference 20/00808/FUL, dated 14 May 2020), subject to the conditions set out in the attached Schedule of Conditions.

Main issues

2. The first main issue to be determined in this appeal is the effect of the proposed development on the character and appearance of the surroundings, including the setting of nearby listed buildings and the Witham Conservation Area. The second is the effect of the proposed development on the residential amenities of neighbours (whether unacceptable harm would be caused by overbearing appearance or intrusion on privacy). The third is whether the scheme would provide satisfactory living conditions for occupiers of the proposed new dwellings.

Reasons

3. Witham is a substantial town between Chelmsford and Colchester, though it is now by-passed by the A12. It has a pleasant and busy town centre, focussed on the old through road, Newland Street (now the B1389). The frontages on Newland Street are primarily dedicated to town centre uses, including retail

and commercial premises, which include some old and interesting buildings. Indeed, the building at 117-119 Newland Street (which is near the appeal site) dates from the eighteenth century and is listed (Grade II*) as a building of special architectural or historic interest. Other buildings in the vicinity are of local interest even though they are not formally designated as listed buildings (including 111-115 Newland Street and 'The Cottage', Kings Chase). The central part of Witham has been designated as the Witham Conservation Area.

4. The appeal site, behind 111-115 Newland Street, has its principal elevation to the main road, with a commercial frontage, but it has a long side boundary to Kings Chase, which is a narrow access road leading to the rear of properties facing Newland Street, opening out into a large park to the south-east of the main shopping street. The buildings that face Kings Walk include blank side walls in contrast to the more significant elevations in Newland Street. Notably, however, there is a large residential care home at the end of Kings Chase, adjacent to the park, and some new residential development is also taking place beyond the end of Kings Chase.
5. The rear parts of the properties that face Newland Street are clearly subsidiary in character, with outbuildings or service areas for example. The appeal site shares this character. Currently there is a small building behind the frontage but most of the appeal site is devoid of buildings, paved with concrete that is being invaded by weeds.
6. It is now proposed that the rear part of the property at 111 Newland Street should be redeveloped to provide a group of four houses and three flats, in a linked development, extending along Kings Chase. Other associated works would also be required, including the demolition of an existing single-storey outbuilding.
7. Provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 impose obligations on those considering whether to grant planning permission for development that would affect the setting of a listed building. In such cases, it is necessary to have special regard to the desirability of preserving the setting, while other provisions in the Act require decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas affected by development proposals.
8. Those formal requirements are reinforced by the 'National Planning Policy Framework', especially at Section 16, which emphasises the importance of conserving and enhancing the historic environment, though it also points out the desirability of putting a heritage asset to its "optimum viable use" as does the 'Planning Practice Guidance'.
9. More generally, the 'National Planning Policy Framework' also emphasises the aim of "achieving well designed places" in the broadest sense (notably at Section 12), while making effective use of land and encouraging economic activity. The 'Framework' is aimed at achieving good design standards by adding to the overall quality of the area and being visually attractive and sympathetic to local character and history. It also recognises that appropriate change may include increased densities and it does not prevent or discourage appropriate innovation or change in principle. At the same time, of course, the aim of achieving good design standards includes both protecting existing

- residential amenities and providing good standards of accommodation in new residential development.
10. It is also important to note that one of the aims of the planning system includes a requirement to pursue the objective of contributing to the achievement of sustainable development, underpinned by the policy objective of promoting sustainable development that is established in the 'National Planning Policy Framework'.
 11. Policies in the Development Plan reinforce the underlying principles that are established in the primary legislation and in the 'National Planning Policy Framework'. 'Braintree District Local Plan 2013-2033' (which was adopted in its final form in 2022) includes various Policies that focus on the importance of good design generally and specifically reflect the national policies (and legislation) that are intended to protect and enhance heritage assets. In this respect, attention can be drawn to Policies SP7, LPP47, LPP52 and LPP53.
 12. Of course, it is also a main aim of the new 'Local Plan' to promote sustainable development, especially through Policies SP1, SP3 and LPP1.
 13. The proposed development would change the character of Kings Chase. At present it is clearly a secondary side street, providing service access to premises that relate to the main commercial frontage on Newland Street (with less significant buildings or blank side walls in the side road) as well as access to the park and to other buildings at the end of the road. The new development would be larger in scale than existing structures on the site but would not be undesirable merely for that reason.
 14. The new street elevation would be more subdued than the more imposing building frontages in Newland Street, making use of traditional forms and materials, creating a restrained but appropriate new architectural statement. The more closely built-up frontage in Kings Chase would create a more interesting and urban streetscene that would reflect the enhanced visual significance of the side road but it would not be out of place in the town centre. In my view, the proposed re-development of the site would enhance the visual qualities of the surroundings.
 15. The new buildings would be set apart from listed buildings in the vicinity and would form part of the overall town centre scene. They would not have a materially harmful effect on the setting of listed buildings. Hence, I have formed the opinion that the proposed development would not have a harmful effect on the character and appearance of the surroundings, including the setting of nearby listed buildings and the Witham Conservation Area.
 16. Turning to the effect of the proposed development on the residential amenities of neighbours, attention has been drawn to the relationship between the proposed new houses and an adjoining property. 'Wyngate', the existing house that adjoins the southwest boundary of the appeal site, apparently has an address in Kings Chase but is reached by a narrow driveway that runs behind the appeal site. It is a conventional semi-detached house that is paired with 'Waveney', beyond. It has a modest front garden and a reasonable back garden, though this is dominated by large trees.

17. The flank wall of 'Wyngate' and the side boundary of its back garden would face the rear boundaries of the proposed new houses. These are shown to have small back gardens of their own, with a rear access from a shared alleyway, and the rear windows of the new houses would look across their own gardens towards 'Wyngate'.
18. There is some distance between the rear elevation of the new houses and the side boundary of 'Wyngate' and, bearing in mind the town centre location, I am not persuaded that the new development would intrude unacceptably on the neighbours' privacy in this case. Nor would the new building be unduly intrusive or dominant in the outlook from the adjoining property.
19. The proposed new dwellings would have good standards of accommodation in themselves, but it has been pointed out that their amenity spaces would be rather small, especially in the case of the new houses (which would be three-bedroom, family homes), though the proposed balconies for the flats have also been criticised. Even so, the provision would be adequate, in my view, and new residents would have the benefit of a public park very close by. Evidently, residents would be aware of other attractions of the higher density town centre location.
20. In short, I am persuaded that the scheme would provide satisfactory living conditions for occupiers of the proposed new dwellings, when considered overall. Nevertheless, I also accept that the construction of outbuildings or of extensions to the houses should be subject to additional controls, to ensure that the site does not become overly congested or cramped by the implementation of "permitted development" rights.
21. Evidently, the appeal site lies within a town centre locality, which is eminently "sustainable" in planning terms. I accept that the Council's five-year housing land supply requirement for the District is currently met but, even so, the proposed development would make a useful contribution to housing provision in a suitable location, which weighs in favour of the appeal.
22. I have concluded that the project would enhance the surroundings in the Conservation Area and that it would not cause material harm to the setting of any listed building. The scheme would not cause undue harm to neighbours' amenities and would provide a satisfactory standard of accommodation overall for new residents. It would not be in conflict with the Development Plan, in principle.
23. In short, I am persuaded that the scheme before me can properly be permitted, subject to conditions, and, although I have considered all the matters that have been raised in the representations, I have found nothing to cause me to alter my decision.
24. I have, however, also considered the need for conditions and, in imposing conditions, I have taken account of those suggested by the Council in the usual way (and the reasons given for them), without prejudice to their main arguments in the appeal. I have also noted the appellants' acceptance of the suggested conditions.
25. In particular, I have concluded that various conditions are necessary, to define the planning permission and to ensure that quality is maintained, both in

- respect of the new buildings themselves and the landscaping of the site, though I have combined and simplified some of the suggested conditions and have modified conditions in the interests of clarity and enforceability.
26. As noted above, I am also convinced that, in this case, there is a clear justification for the removal of certain permitted development rights, even bearing in mind that they are normally of general application.
27. An additional condition is required to ensure that the site is properly recorded in relation to potentially interesting archaeology (in view of the historic nature of the location). Furthermore, a condition is required to ensure that appropriate mitigation is required in relation to protected and priority species, as identified in the submissions. Similarly, a condition is required to secure biodiversity enhancement (although the implications are likely to be limited, due to the nature of the site and the extent of the proposed built development).
28. However, I am not persuaded that a specific condition is necessary in relation to noise insulation against internally or externally generated noise, bearing in mind the application of other legislation, including the Building Regulations.
29. Various conditions are also necessary and reasonable, however, to control the construction process itself, including conditions to ensure that risks from land contamination are minimised and to prevent damage or undue disruption resulting from the progress of the works.
30. As suggested by the Council, Residential Travel Information Packs are needed, in the interests of reducing the need to travel by car and promoting sustainable development and transport.
31. The Council's appeal statement records that they would have been minded to refuse the planning permission for the proposed development, among other reasons on the ground that the planning application did not *"secure adequate mitigation measures to prevent the development causing a likely significant adverse effect upon the integrity of European Designated Sites (the Blackwater Estuary Special Protection Area and Ramsar site; the Dengie Special Protection Area and Ramsar site; and the Essex Estuaries Special Area of Conservation)"*. In the event, however, the appellant has made a payment to the Council that addresses this requirement. This issue has been resolved, therefore, and does not form a "main issue" in the Appeal.

Roger C. Shrimplin

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved drawings:
 - drawing number JT13 50B (Location Plan);
 - drawing number JT13 51 (Existing Site Plan);
 - drawing number JT13 55E (Proposed Ground Floor Plan);
 - drawing number JT13 56F (Proposed First and Second Floor Plan);
 - drawing number JT13 57D (Proposed Elevations);
 - drawing number JT13 58C (Proposed Elevations);
 - drawing number JT13 59C (Proposed Site Plan);
 - drawing number JT13 60B (Block Plan and Roof Plan);
 - drawing number JT13 102 (Existing Floor Plans);
 - drawing number JT13 103 (Existing Elevations).
3. No materials shall be incorporated into the external surfaces of the development hereby permitted (including services, pipework, television and radio aerials and meter cupboards) until samples (or specifications) of those materials and drawings (at appropriate scales) of the construction details to be used have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, using the approved materials.
4. Prior to first occupation of Flats 6 and 7, all windows at first floor level in the south-west elevation of Flat 6 and the north-east elevation of Flat 7, as hereby permitted, shall be glazed in obscured glass and shall also be fixed shut, except for that part of any window which is at least 1.7 metres above finished floor level in the room in which the window is installed. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no further modifications to these windows shall be made and no windows, doors or openings of any kind shall be inserted in these elevations of the building without the express written approval of the local planning authority.
5. Prior to first occupation of Flats 5, 6 and 7, details of railings, privacy screens and enclosures for the balconies to those flats, shall be submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall only be implemented in accordance with the approved details and shall be permanently retained as such. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no further modifications to these railings, privacy screens and enclosures shall be made without the express prior written approval of the local planning authority.
6. No construction works above ground shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. All these works shall be carried out as finally approved in detail. The details to be submitted shall include proposed and

existing finished levels, means of enclosure (including bollards) and functional services above and below ground. The details of the hard landscape works shall include details of provision for car parking, boundary treatments and access design. The details of the soft landscape works shall include details of all existing trees in the vicinity of the proposed development (and details of the method of protecting retained trees during the course of the work), planting plans and implementation programme.

7. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the implementation programme approved by the local planning authority. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation. No further modifications to any element of the hard landscaping shall be made without the express prior written approval of the local planning authority.

8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development within Part 1 Classes A-E of Schedule 2 of the Order shall be carried out without the prior written permission of the local planning authority.

9. Prior to first occupation of the dwelling hereby permitted, the areas shown on the approved landscaping scheme as being dedicated to car parking and manoeuvring shall be laid out and brought into use as such. They shall be retained and used for no other purpose thereafter. The landscaping scheme shall define the allocation of the spaces to the new dwellings and the spaces shall not be occupied other than in accordance with that approved scheme.

10. No development or preliminary groundworks of any kind shall take place until a programme of archaeological investigation and historic building recording has been secured in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority. No development or preliminary groundworks of any kind shall take place other than in accordance with the programme of archaeological investigation identified in the approved written scheme of investigation. A post-excavation assessment is to be submitted to the local planning authority within six months of the completion of the fieldwork, unless otherwise agreed in advance by them in writing. The post-excavation assessment is to include a post-excavation analysis, preparation of a full site archive and report suitable for deposition at the local museum, and a publication report.

11. All mitigation measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal Report (MLM Consulting Engineers Ltd, December 2019) and the Bat Emergence and Return to Roost Survey (James Blake Associates Ltd, June 2020), as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

12. A Biodiversity Enhancement Strategy for protected and priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following: a) purpose and conservation objectives for the proposed enhancement measures; b) detailed designs to achieve the stated objectives; c) locations of proposed enhancement measures by appropriate maps and plans; d) persons responsible for implementing the enhancement measures; e) details of initial aftercare and long-term maintenance (where relevant). The works shall be implemented in accordance with the approved details, prior to first occupation of the development hereby permitted, and shall be retained in that manner thereafter.

13. No work on any phase of the development (with the exception of demolition works where this is for the reason of making areas of the site available for site investigation), shall commence until an assessment of the risks posed by any contamination within that phase shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with 'British Standard BS 10175: Investigation of Potentially Contaminated Sites – Code of Practice' and the Environment Agency's 'Guidelines for Land Contamination Risk Management' (LCRM 2020) (or equivalent if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The development shall only be carried out in accordance with the approved details unless the local planning authority gives its written consent to any variation. The assessment shall include:

- a survey of the extent, scale and nature of contamination; and
- an assessment of the potential risks to: a) human health; b) property (existing or proposed) including buildings, crops, livestock, pets, woodland, service lines and pipes; c) adjoining land; d) groundwater and surface waters; e) ecological systems; and f) archaeological sites and ancient monuments.

If, following the risk assessment, unacceptable risks are identified from land affected by contamination in that phase, no work on any phase of the development shall take place until a detailed land remediation scheme has been completed. The scheme is to be submitted to and approved in writing by the local planning authority and the development shall only be carried out in accordance with the approved scheme. The scheme shall include an appraisal of remediation options, identification of the preferred option or options, the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990. Following the completion of the remediation works and prior to the first occupation of the development, a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.

14. No piling shall be undertaken on the site in connection with the construction of the development until a piling design and management scheme (including resultant noise and vibration levels) has been submitted to and approved in writing by the local planning authority. The construction process shall be carried out in accordance with the approved scheme.

15. No development shall take place (including any ground works or demolition) until a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for the parking of vehicles of site operatives and visitors, loading and unloading of plant and materials, storage of plant and materials used in constructing the development, and wheel and underbody washing facilities. The construction process shall be carried out in accordance with the approved Construction Management Plan.

16. The development shall not be occupied until the developer has provided a Residential Travel Information Pack (to include six one-day vouchers for use with the relevant local public transport operator) for each dwelling, promoting the use of sustainable transport. Details of the Residential Travel Information Pack shall have been submitted to and approved in writing by the local planning authority prior to first occupation of the development.