



Appeal Decision

Site visit made on 6 December 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/M2840/W/22/3291901

25 Montagu Street, Kettering NN16 8XG

- 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 Mr Neil Briggs against North Northamptonshire Council.
 - The application Ref NK/2021/0261/FUL, is dated 19 March 2021.
 - The development proposed is creation of 5 additional residential units. 10 units previously approved KET2017/0237.
-

Decision

1. The appeal is dismissed and planning permission for creation of 5 additional residential units, 10 units previously approved KET2017/0237, is refused.

Application for costs

2. An application for costs was made by Mr Neil Briggs against North Northamptonshire Council, which are the subject of a separate Decision.

Procedural Matters

3. The appeal is against the Council's failure to determine an application for planning permission. The Council's Statement of Case outlines the reasons it considers the proposal would be unacceptable, but these are not its formal determinations, as the jurisdiction to determine the application transferred from it upon valid receipt of the appeal. Nevertheless, the Council has set out that it would have refused the application had it been empowered to do so, I have therefore taken its reasons into account in determining the main issues.
4. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Additionally, section 72 of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. However, an appeal against a refusal of listed building consent was turned away as not being valid, so my consideration of the appeal does not extend to section 16(2) of the Act or works to alter the listed building which do not require planning permission.
5. The appellant has suggested he is willing to negotiate and amend his scheme, where necessary, but I am conscious the appeal process should not be used as a means to progress alternatives to the scheme that would have been refused. In the interests of fairness and natural justice, I consider that interested parties

in particular would be prejudiced if I were to consider any amendments. My findings therefore relate to the scheme shown on the drawings before me as part of the appeal: OS Plan Black/White, 0821 SK 01, 0821 SK 02, 0821 SK 03, 0821 SK 04, 0821 SK 05, 0821 SK 06, 0821 SK 07, 0821 SK 08, 0821 SK 10, 0821 SK 11, 0821 SK 100, and Construction and Building Regulations Specification Notes.

Main Issues

6. The main issues are:

- whether the proposed development would preserve a Grade II listed building, known as 'Conservative Club, 25, Montagu Street', and any of the features of special architectural or historic interest that it possesses, and the extent to which it would preserve or enhance the character or appearance of the Kettering Conservation Area;
- whether or not the proposed development would make adequate provision for affordable housing, library services and primary health care; and
- whether suitable living conditions would be provided for future occupiers of the proposed basement flat.

Reasons

Significance and Setting

7. The appeal concerns a late 19th Century former Conservative Club designed by Samuel Perkins-Pick, a prominent local architect. Originally built to further Conservative principles, through social gatherings and interaction, it is a grand building, the architecture of which is refined in its brickwork, detailing and joinery. It also occupies a prominent position in Montagu Street due to its imposing scale in close proximity to the carriageway.
8. The social purposes of the built mean rooms were of generous proportions, with tall ceilings. There was also a bowling green to the rear. The prominence of social engagement in such buildings is fairly commonplace and the particular importance of the principal function room at first floor is underscored by its dedicated staircase to the west of the building. This allowed direct access from Montagu Street and avoided visitors to gatherings navigating the main building.
9. Despite a series of alterations to the rear façade and later flat roofed extensions to its east and west, I find the significance of the listed building today is derived from its architectural and historic interest, as a purposefully designed and built former Conservative Club of 19th Century origin. The grand detailing of the building and its internal function rooms and spaces are particularly important to its appreciation, as a prominent local building for social engagement.
10. The listed building also draws significance from its association with the prominent architect Samuel Perkins-Pick and its setting. The latter includes the immediate surroundings of the building in its curtilage and its relationship with surrounding buildings in Montagu Street and Eden Street. Moreover, the space formerly provided by the bowling green enables the building to be appreciated in its context, including from over the wall to Eden Street.

11. The site is also situated within the Kettering Conservation Area (CA). In so far as it relates to the appeal, the significance of the CA today lies, at least in part, in the positive contribution made by the rich legacy of historic structures, including the architectural legibility of their built fabric, scale, and relationship with the pattern of streets. The listed building is a good example of the historic buildings located within the CA, but the extent of its decoration sets it apart from other buildings nearby. It therefore contributes significantly to the character and appearance of CA and, thereby, its special interest.

Effect of the Proposal

12. The appeal does not include existing drawings of the building, but the proposed drawings provided clearly reference the positions of all existing and proposed walls. It was therefore unnecessary to request existing drawings to establish how the proposal would relate to the building. The internal sub-divisions are so intrinsically linked to the proposal that they are part and parcel of the development and therefore within scope as part of this appeal.
13. At the time of my site visit, works were being undertaken to implement the approved scheme for ten flats¹ within the building.

Former Function Room

14. The HS refers to Units 7 and 8 as duplex apartments with double-height staircases and galleried landings. The appellant's Final Comments also reference 'the installation of galleries and mezzanine floors to respect the large voluminous space of the original ball room'. However, the drawings show four separate apartments within the function room from the floor to the vaulted ceiling and up to the feature windows to either end. The floorplate between the new level would be arranged across glazing in the arched windows and no space would be retained open from the floor to the ceiling. There are therefore clear disparities between what is shown and described.
15. The approved scheme was for flats within the function room, which required subdivision of the grand open space therein. It is inevitable that this would have a significant impact on the ability to appreciate the space, but there is no detail before me of the extent of subdivision required to implement the approved scheme. It is therefore unclear how these would relate horizontally and vertically to the large feature windows at either end of the room, including whether there was any opportunity to experience the relationship between the windows and the space within the room. Accordingly, I cannot be certain the proposed internal subdivision of the function room would not have a greater and more harmful effect on the significance of the listed building.
16. To request further information of the approved scheme, including differences between it and the proposal, or clarification in respect of discrepancies between what is shown on the drawings or written in documents would have provided a further opportunity to the appellant to construct his case. This could have been construed as evidence gathering by other interested parties potentially in the appellant's favour.
17. It is clear, however, that the floorplate would not be, as the appellant suggests, between the window heads and cills and it would be immediately apparent from the exterior of the building, behind glass replaced by obscure glazing. Due to

¹ Planning References: KET/2017/0237 and KET/2017/0239.

the height of the room above the street and the nature of its use, there is no historic reference point for restricting views in or out of these windows.

Units 1, 2 and 6 and 9 and 11

18. The proposal would also involve further subdivision of larger rooms at ground and first floor to accommodate a new unit on each floor. For reasons similar to those outlined above, the subdivision and reconfiguration of these rooms to accommodate additional units would erode the floor plan legibility of the building and the contribution made by the large rooms to the understanding and, thereby, significance of the listed building. I cannot be certain of how the alterations would differ from the approved scheme, nevertheless, they would be harmful to the listed building.
19. The proposal would reconfigure access to the higher-level units in the function room to make use of the staircase leading directly from Montagu Street. I note that this may not otherwise have been used with the approved scheme, so a key circulation route to the function room would remain active. This amounts to a heritage benefit.

Windows

20. Most historic windows will illustrate, to a varying extent, the materials, technology, craftsmanship and architecture around the time they were installed. The success of replacement windows therefore depends on their design, profile, size of openings and the extent of glazing. The drawings before me refer to the repair and restoration of windows, as necessary, but the Construction and Building Regulations Specification Notes suggest all windows and doors are to be fitted with sealed double-glazed units and replacement windows are to be uPVC. Details of the proposed uPVC replacement windows have not been provided. The appellant suggests such matters would be addressed through listed building consent, but alteration of windows in the proposal could also materially affect the external appearance of the building, so fall to be considered in this appeal.
21. In my experience, the finish of uPVC windows tends to be uniform. That comes with the manufacturing process, so they lack the finesse and craftsmanship of traditionally constructed timber windows, which age over time. The framing, glazing bars and leadwork would also likely be incorporated in another form and profile. This would contrast with the existing refined and slender historic windows and it would be readily apparent that proposed windows would be modern uPVC replacements.
22. The rear elevation of the building includes several windows at ground floor that have been partially infilled at some point in time, others would be infilled to the same extent as part of the proposal. There is no substantive evidence before me to suggest these were allowed to be retained or altered with the approved scheme. There is therefore limited evidence as to a fallback position regarding such matters. The foreshortening and division of these tall openings to smaller windows has resulted in harmful alterations to the external appearance of the building. This would be perpetuated and exacerbated by the appeal scheme and further erode the balance and splendour of the rear fenestration.
23. There are also windows proposed for the new basement flat. Whereas the majority of other windows in the building are vertically emphasised, these

would be square. The shape of the windows would therefore be in such contrast to the existing windows that they would stand out as poorly referenced incongruous additions to the building. Notwithstanding this, the lightwells serving the windows and the fabric removed to construct them would have a very limited effect on the significance of the building, particularly as there are other existing openings in the exterior of the building at this level.

24. Alterations to the existing windows and the new windows proposed at basement level would therefore be harmful to the significance of the listed building. Given the prominence of the building within the CA, the changes to the above ground windows would also be harmful to its character and appearance.
25. The appellant indicates several rooflights forming part of the approval, on the east and west roof slopes of the tallest gable facing Montagu Street, would be in similar locations to those proposed. There is no clear evidence before me to either confirm or dispute this position. The number, size, and arrangement of rooflights would be evident from Montagu Street, but not so overtly prominent that they would be visually harmful to the large roof slopes of the building. Subject to details of their final design, I do not find these to be harmful to the significance of the listed building or the character and appearance of the CA.

Parking, including EV points and Cycle Storage

26. The approved scheme included a single row of parking spaces perpendicular to the rear of the building. The appeal scheme includes five additional spaces opposite the approved spaces. While this would reduce the size of the grassed area to the rear of the building, it would remain sufficiently large to serve the building. The parking therein would not reduce separation of the building from neighbouring tall commercial buildings. There would be limited visibility of the parking from Eden Street and elsewhere within the CA and, in any event, its design and layout would not be harmful to setting of the listed building or the character and appearance of the CA. Similarly, electric vehicle charging points could be screened by planting in close proximity of the spaces, which could be secured by a planning condition.
27. The application did not include any details of the proposed arrangements for cycle storage, but the appellant indicates that it could be accommodated in the basement or at ground floor. There is also space within the front yard or rear of the building where the scale, form, and appearance of a small enclosure could be discreetly provided to preserve the setting of the listed building.

Public Benefits and Conclusions on the First Main Issue

28. The statutory duties in Sections 66(1) and 72(1) of the Act are matters of considerable importance and weight, as are the aims of paragraphs 197, 199 and 200 of the Framework.
29. The proposed subdivision of the building, the associated removal of historic windows and replacement with uPVC alternatives, and new windows inserted at basement level, would fail to preserve the listed building or its features of special architectural or historic interest. Given that the special interest of a listed building within the CA would be diminished, its character and appearance as a whole would be incrementally harmed. In my view the harm that I have identified equates to less than substantial harm to the significance of these

designated heritage assets. In such circumstances, Framework paragraph 202 identifies this harm should be weighed against the public benefits of proposals.

30. The proposal would provide five additional homes above that already approved. This would be a further contribution to boosting the supply of housing locally and nationally and encourage town centre living. However, the magnitude of the proposal means these would be limited social and economic benefits.
31. The facilities and services in Kettering are close and parking and cycle storage would be made available to future occupiers, but I ascribe negligible additional benefit regarding these matters, as I consider there to be an absence of harm.
32. Use of the stairs from Montagu Street to the former function room would be a heritage benefit, but would serve part of the scheme leading to immeasurable harm, additional to that already approved, so I afford this negligible weight.
33. The proposal would be a further option toward securing the long-term future of building, which the appellant suggests was deteriorating. However, works are underway to implement the approved scheme, which already result in a lot of change and alteration to the listed building. There is no substantive evidence before me to suggest why the larger units within the building would be more difficult to sell or let in Kettering or why further subdivision of the nature proposed is required to sustain the heritage asset.
34. Taking the above together, the public benefits I have outlined would not justify allowing development that would fail to preserve the special interest of the listed building and the character and appearance of the CA. In accordance with paragraphs 197 and 199 of the Framework, considered together, I am therefore not persuaded that there would be wider public benefits of sufficient magnitude to outweigh the great weight to be given to the less than substantial harm that I have identified to the significance of the heritage assets.
35. In light of the above, I conclude that, on balance, the proposal would fail to preserve the special historic interest of the Grade II listed building and the proposed windows would fail to preserve the character and appearance of the conservation area. Hence, the appeal scheme would fail to satisfy the requirements of the Act, paragraphs 197, 199 and 200 of the Framework and would conflict with the heritage aims of Policy 2 of the North Northamptonshire Joint Core Strategy 2011-2031² (NNJCS) and Policy 12 of the Kettering Town Centre Area Action Plan 2011-2021³ (KTCAAP).

Affordable Housing, Library Services and Primary Health Care

36. The proposed development would be over the threshold for affordable housing to be provided within the building in accordance with the NNJCS and, due to the increase in population expected from the development, contributions have also been sought by the Council's consultees toward the provision of clinical space to accommodate necessary expansion of primary health care; and toward the improvement, enhancement, or expansion of Library facilities.
37. The proposal does not include any affordable housing and there is no legal agreement before me to secure any of the required contributions. The appellant's case is supported by a *Financial Viability Appraisal* informed by

² Adopted July 2016.

³ Adopted July 2011.

national and industry guidance⁴. While this sets out that the scheme would not be able to make any contributions toward affordable housing or other infrastructure, it refers to relevant development plan policies which set out the approach to assessing viability of proposals. Moreover, there is an expectation that they are independently verified, which has not occurred with the scheme.

38. Accordingly, I cannot be certain that the proposed development would not be able to provide physical or financial contributions toward affordable housing, library services and primary health care, as necessary. The proposal could therefore have a harmful effect on infrastructure in the absence of such contributions and fail to contribute towards affordable housing in Kettering. Hence, I conclude that it has not been demonstrated that the proposal would make adequate provision for affordable housing, library services and primary health care, in conflict with the aims of NNJCS Policies 1, 10 and 30.

Living Conditions

39. The proposed flat, identified as Unit 15, would be below ground level in the basement of the building. Natural light to the accommodation therein would be secured from lightwells serving three new north-facing windows to the bedroom and living spaces therein. These would be shallow in depth and only constructed outside each window. As a consequence, light penetrating into the rooms is likely to be limited, with the majority of the rooms being gloomy and unwelcoming to its occupants. The extent of natural ventilation is also likely to be restricted by the position of the windows and size and nature of the light wells. While mechanical ventilation could be provided, it is questionable whether this would offer future occupants the same degree of comfort.
40. Notwithstanding the above, Unit 15 would be no closer to the parking spaces at the rear of the building than units on the floors above. Persons arriving or departing in vehicles from the spaces are therefore unlikely to lead to harmful noise conditions to unacceptably disturb future occupiers of that flat. It is also doubtful whether noise generated from wall mounted extract vents serving other flats would be so detrimental it would harm occupiers of the flat.
41. Despite my findings in relation to noise, the proposed development would not provide suitable living conditions for future occupiers of the proposed basement flat, in respect of natural light and ventilation. Hence, it would conflict with the aims of NNJCS Policy 8.

Other Matters

42. The Council also raised concern regarding the potential for noise from Montagu Street to disturb occupiers of adjacent flats. However, the approved scheme also included flats adjacent to the street, so would be unlikely to exacerbate any such impacts that would have been likely to be considered at that time.

Planning Balance

43. The development plan for the area includes the NNJCS. While this predates the current Framework, it is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication.

⁴ Valuation of Development Property (Royal Institution of Chartered Surveyors, 2019); the 2019 version of the Framework; and the Planning Practice Guidance.

Due weight should be given to policies according to their consistency with the Framework.

44. Despite the absence of a balancing exercise in relation to heritage harms in NNJCS Policy 2 and KTCAAP Policy 12, they are generally consistent with the heritage aims of the Framework, particularly the close relationship between their language and that found in the statutory duties of the Act. I therefore afford considerable weight to the conflict of the proposal with Policy 2, but only moderate weight to the conflict with Policy 12, as the timeframe for the KTCAAP has expired.
45. Policies 1, 8, 10, and 30 of the NNJCS are also generally consistent with the Framework in respect of its aims to achieve healthy living conditions, provide infrastructure to serve new homes and achieve a mix of high-quality homes, including affordable housing. I therefore afford significant weight to the conflict of the proposal with this policy.
46. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage assets. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the listed building and the character and appearance of the conservation area; failure to provide contributions and/or physical accommodation for affordable housing, library services and primary health care; and its failure to provide suitable living conditions for future occupiers of the proposed basement flat in respect of natural light and ventilation.
47. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and I find that the adverse impacts of the proposal are matters of great weight against the grant of planning permission that outweigh the stated benefits.

Conclusion

48. The proposed development would be contrary to the development plan and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed and planning permission is refused for the scheme.

Paul Thompson

INSPECTOR