



Appeal Decision

Site visit made on 8 November 2022

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th January 2023

Appeal Ref: APP/F2415/W/21/3285135

Land adjacent to Seleta, Bell Street, Claybrooke Magna LE17 5AL

- 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 Carl Housley against the decision of Harborough District Council.
 - The application Ref. 21/01267/FUL, dated 9 July 2021, was refused by notice dated 3 September 2021.
 - The development proposed is the erection of two semi-detached dwellings with associated vehicular access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As the appeal site is separated from the adjacent property known as Seleta by a timber fence, I have taken the site address from the appeal form and the Council's decision notice, which describe the site as adjacent to Seleta.
3. Although the appellant was unable to attend the site visit, I was able to see the site over the fence on the frontage.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of the occupiers of Nos 1 and 2 The Vineyard, with particular regard to the outlook from the rear facing windows and garden,
 - the character and appearance of the area, and
 - the provision of open space in the area.

Reasons

Living conditions

5. The side gable of the proposed dwelling at Plot 1 is relatively wide and would be set alongside the rear garden boundaries of 1 and 2 The Vineyard (Nos 1 and 2), at a distance of some 12 metres from their rear walls. There are a number of windows in the rear walls of Nos 1 and 2, that face the application site. The rear gardens and houses at Nos 1 and 2, occupy land at a lower level than much of the appeal site.

6. I have taken account of the proposed alterations to ground levels on the appeal site and the screening effect of the existing boundary fence. However, given the width, height and closeness of the side gable of the proposed dwelling at Plot 1 to Nos 1 and 2, I find that the proposed building would dominate the outlook of occupiers of those neighbouring dwellings from their rear facing rooms and gardens, in a manner that would be oppressively overbearing.
7. I note that the distance of separation between the side gable of the proposed dwelling at Plot 1 and the rear walls of Nos 1 and 2, is less than that required by the Harborough Supplementary Planning Guidance, Note No. 2: Residential Development – Major Housing Sites, adopted by the Council in 2003 (SPG). I have taken account of the appellant's submissions on the SPG's separation distances and the requirement to apply them flexibly based on site specific circumstances. However, I have assessed the appeal based on the information before me and what I experienced at the site visit. I therefore find that the conflict with the SPG's separation distance is not determinative in reaching my decision on this ground.
8. I note the appellant's argument that achieving access to the garden of Plot 2, for maintenance and storage justifies the closeness of the proposed building to Nos 1 and 2. However, I need to consider the effect of the proposed development on the living conditions of occupiers of the dwellings at Nos 1 and 2.
9. For these reasons, I conclude that the proposal would have a significantly adverse effect on the living conditions of occupiers of 1 and 2 The Vineyard. As a result, this would be contrary to Policy GD8 of the Harborough Local Plan 2011-2031 (HLP), which requires development to be designed to avoid significant adverse effects on the living conditions of neighbouring occupiers through overbearing impacts, amongst other objectives.

Character and appearance of the area

10. The appeal site is a noticeable open gap in the relatively tightly spaced row of buildings fronting Bell Street. It provides a visual break in the pattern of development on this side of the Street by separating the row of linked houses on one side of the site, from the houses fronting The Vineyard on the other. In this sense, the appeal site marks a transition point between the simple form and uniform appearances of the linked houses to the west, and the generally larger, architecturally detailed and individualistic houses to the east. In this context, I find that the openness of the appeal site contributes positively to the character and appearance of the area.
11. Although the proposed dwellings would be of a scale and appearance comparable with existing dwellings in the locality, I find that the contribution of the appeal site in its current open state would be diminished by being built on by the appeal proposal.
12. As a result, I conclude that the proposal would significantly harm the character and appearance of the area. It would be contrary to Policies GD2 and GD8 of the HLP, which require development within built-up areas to respect the context and distinctive characteristics of the site and its environment, amongst other objectives.

Provision of open space

13. Planning permission¹ for the homes fronting The Vineyard, sought to secure the appeal land as open space accessible to the public. Interested parties have described it as being used by the public for recreation. I saw that there was a gap in the fence on the frontage that appears to provide access to the land. Therefore, the evidence available suggests that the appeal land has public value by offering important opportunities for recreation and social interaction by the public. Furthermore, for the above reasons, the site contributes positively to the character and appearance of the area.
14. For these reasons, for the purposes of this decision, I consider it falls within the definition of open space set out within the Framework, which defines open space as all open space of public value which offer important opportunities for sport and recreation, and can act as a visual amenity, for example by contributing to the character and appearance of the area.
15. The Framework sets out that open space should not be built-on unless it meets at least one criterion in Paragraph 99, including whether the open space lost to development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
16. The appellant has submitted a Unilateral Undertaking (UU) obligating the landowner to pay a financial contribution to the Council towards funding the provision of replacement open space or improving an existing open space in the village or the neighbouring village of Claybrooke Parva.
17. As I am dismissing the appeal for other reasons, I need not consider the submitted UU in detail. However, as the provision of open space is a main issue in dispute, I have assessed its overall approach and have a number of concerns with it.
18. Although the contribution set out in the UU is based on the Council's own formulae for major housing developments and the calculation has been confirmed by the Council's Officer, the UU cannot bind the Council to spend the contribution in any particular way. I have no assurance from the Council that it would spend the contribution in the way proposed by the appellant.
19. Furthermore, the alternative locations proposed by the UU for the provision of open space are not before me and they would potentially be located some distance from the appeal site. As such, I find that the UU would not overcome the proposal's effect on the character and appearance of the area, nor would it demonstrate the equivalent or better provision of open space for public recreation.
20. Therefore, the planning obligation in the UU would not make the proposed development acceptable and would not constitute a reason for granting planning permission. As such, the obligation would not meet the test of necessity in paragraph 57 of the Framework, for securing planning obligations. For these reasons I have not taken the UU into account in coming to my decision.
21. For these reasons, I conclude that the proposed provision of open space would not overcome the proposal's significantly harmful effect on the character and

¹ 16/00559/FUL

appearance of the area. It would not provide equivalent or better provision of open space for public recreation. As such, it is contrary to Policies GD2 and GD8 of the HLP, which require development within built-up areas to respect the context and distinctive characteristics of the site and its environment, and promote healthy lifestyles, amongst other objectives.

22. It would also conflict with the Framework's objectives of ensuring development is sympathetic to the existing built environment and landscape setting, and provides high quality open spaces to achieve healthy communities and promote social interactions.

Other Matters

23. The provision of two houses would bring economic benefits to the area, arising during the construction period and from residents spending their money on services and goods in the rural locality and beyond.
24. The development would deliver smaller homes, contributing to housing supply and a choice of homes. Residents would contribute to supporting vibrant and healthy communities through participating in community activities and groups in the village and beyond. The development would support the local services such as the school.
25. The gardens of the proposed dwellings provide an opportunity to enhance biodiversity. The appellant's Preliminary Ecological Appraisal, suggests enhancements in the form of planting, and installing bird and bat boxes.
26. Planning permission runs with the land and the willingness or otherwise of a third party to maintain the appeal site is not a determinative matter in this appeal.

Conclusion

27. For the reasons given above, I have found that the proposal would harm the living conditions of neighbouring occupiers, the character and appearance of the area, and the health and well-being of the community. I therefore give significant weight to the appeal proposal's conflict with Policies GD2 and GD8 of the HLP.
28. The economic, social and ecological benefits of the proposed development are material considerations. However, given the scale of the proposed development these have limited weight and are firmly outweighed by the policy conflict that I have identified above.
29. I conclude that the proposed semi-detached dwellings would be contrary to the development plan as a whole. The material considerations do not outweigh this finding. The appeal should therefore be dismissed.

G Sylvester

INSPECTOR