



Appeal Decision

Site visit made on 31 January 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/R3705/W/22/3309274

Peel House, 79 Witherley Road, Atherstone CV9 1NA

- 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 King against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2021/0155, dated 16 March 2021, was refused by notice dated 8 June 2022.
 - The development proposed is extension and alterations to existing dwelling and construction of 1 new dwelling with access off Nursery Road.
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Decision

1. The appeal is allowed and planning permission is granted for extension and alterations to existing dwelling and construction of 1 new dwelling with access off Nursery Road at Peel House, 79 Witherley Road, Atherstone CV9 1NA in accordance with the terms of the application, Ref PAP/2021/0155, dated 16 March 2021, subject to the conditions in the Schedule at the end of this decision notice.

Application For Costs

2. An application for costs was made by Mr King against North Warwickshire Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. An interested party has alleged that a building on the appeal site has already been demolished, although the appellant disputes this. In any case, my assessment is based on the development as shown on the appeal drawings.

Main Issue

4. In light of the Council's refusal reasons and the appeal submissions, the main issue is the effect of the development on the living conditions of occupiers of neighbouring properties, having regard to privacy, outlook and access to light as well as traffic generation and noise.

Reasons

5. Peel House lies next to Witherley Road. The Cottage is a separate building to the rear with a principal elevation that faces away from Peel House towards a sizeable garden. Extensions are proposed to either side of The Cottage. These would include extra bedrooms, a kitchen dining area as well as an annexe element. The extension on the side nearest to 39 Nursery Road (No 39) would project beyond the front of The Cottage.

6. The new dwelling would be positioned in the current garden area. An access from Nursery Road would be formed between the driveways to No 39 and 40 Nursery Road (No 40) by removing part of an existing boundary wall. The new dwelling (plot 1) and The Cottage as extended (plot 2) would be served by this proposed access as well as a driveway leading onto the site.

Privacy

7. The extension to The Cottage near to No 39 would include 2 first floor windows that face the boundary. By reason of its proximity and height above ground level, the staircase window would potentially allow views over the boundary wall onto No 39. However, the plans show this window to be obscure glazed and so it would not allow sight of the adjoining residence. Views from the other side window would be obstructed by the projecting wall of the extension.
8. A side rooflight would provide views of the sky rather than towards No 39's windows or garden. Also, obscure glazing to the first floor ensuite bathroom window in the extension on the other side of The Cottage would prevent sight of the back garden of 81 Witherley Road (No 81). As such, the extensions to The Cottage would avoid unacceptable overlooking onto neighbouring properties.
9. The plot 1 dwelling would have 2 first floor bathroom windows that would face No 39. Again, these would be fitted with obscure glazing so as to prevent overlooking. Two bedroom windows would provide views of the side elevation of No 40 but they would not allow overlooking of any windows. Also, views towards No 40's back garden would be obstructed by the roof over the garage to the plot 1 house. Due to their orientation and separation from No 40's back garden, these bedroom windows would not lead to an intrusive loss of privacy.
10. First floor windows on the eastern elevation of the plot 1 dwelling would allow views towards no 81. However, boundary features would restrict sight of No 81's garden and any direct views would be towards the end of the plot rather than towards the house. As such, any overlooking onto No 81 would not lead to a harmful loss of privacy.
11. None of the other ground or first floor windows in the proposed buildings would lead to any significant overlooking onto adjoining properties. Therefore, I conclude the development would not cause an unacceptable loss of privacy. In these regards, it would accord with part 9 of policy LP29 of the North Warwickshire Local Plan 2021 (the LP). Amongst other things, this looks to avoid unacceptable overlooking onto neighbouring properties.

Outlook and access to light

12. The Council's refusal reason does not refer specifically to effects upon outlook or overshadowing of adjacent properties. However, such concerns are raised in its appeal statement and interested parties have objected on these grounds.
13. The side extension that projects to the front would bring The Cottage nearer to the boundary with No 39. It would be clearly seen from No 39's back garden and ground floor rear windows over the boundary wall. However, the side of the extension would be set off the boundary with a parking space in between. Also, it would be set away from No 39's rear facing windows. Moreover, the nearest part of the addition would have low eaves and a roof that would slope up to a ridge further away from the boundary. The extension would also be

built on a lower level than No 39 and its garden. Through a combination of these factors, the extension would avoid unacceptable overbearing effects or overshadowing to No 39.

14. The plot 1 house would be clearly seen from the ground and first floor windows in No 39's side elevation. However, views would remain towards the open space between The Cottage and the plot 1 dwelling. The driveway would be between the new house and the boundary and the proposal would be built on a lower level than No 39. Furthermore, the nearest part of the dwelling would be a narrow 2 storey projection with a hipped roof that slopes up and away from the boundary. Also, the outlook from No 39's front and rear facing windows towards its own front and back gardens would be unaffected by the scheme. For these reasons, the plot 1 house would not appear unduly overbearing and occupiers of No 39 would retain an acceptable outlook from their property.
15. At certain times of the year, the plot 1 dwelling would cause a loss of morning sunlight to No 39's side elevation. However, overshadowing of No 39's first floor side window is unlikely given its height above the ground as well as the separation distance to the proposed house. A loss of direct sunlight to No 39's ground floor side windows is more likely. However, one of these windows serves a garage where access to light is typically lower than that for a habitable room. The other is a high level window to a living room, which also benefits from fenestration to No 39's back garden. The development would not cause any meaningful overshadowing of No 39's rear windows and so the living room would retain a reasonable access to light. Consequently, any overshadowing caused by the proposed dwelling would avoid an unacceptable effect on the living conditions of occupants of No 39.
16. The proposed development would be positioned a sufficient distance away from other properties so as to avoid any significant overbearing or overshadowing effects. As such, I conclude it would avoid unacceptable impacts through a loss of outlook or light. In these respects, it would accord with LP policy LP29.

Traffic generation and noise

17. The proposed development would lead to vehicular activity on the appeal site, whereas currently there is none. However, it is likely that the level of additional traffic and associated noise would be modest as only 2 dwellings would be served by the new access.
18. Also, neither the Council nor any other party have sought to dispute the appellant's claim that permitted development rights would allow the construction of an access off Nursery Road to serve The Cottage. Furthermore, I find no reason to disagree with the appellant's claim that there is a realistic prospect of an access being provided in the event that this appeal is dismissed, as it would be of benefit to the occupiers of Peel House and The Cottage. This fallback position would generate traffic noise on the appeal site, although it would only result in car movements associated with The Cottage and not the plot 1 dwelling. Nevertheless, the fallback is a legitimate consideration to bear in mind in my deliberations on this issue.
19. On my visit, the site and surrounding area was quiet. Even so, I saw that most Nursery Road residences had off-street parking. As such, I would expect that the noise of cars parking and turning as well as people getting into and out of vehicles is not unusual in the locality.

20. The parking spaces to the plot 1 dwelling would be close to the car port and garage to the side of No 40, rather than near to any garden or windows. Also, the boundary wall would provide a degree of noise attenuation. As such, noise associated with the parking and turning of vehicles at the plot 1 dwelling would avoid any significant disturbance to occupiers of No 40.
21. The access drive to serve the development would be along the side boundary with No 39. Also, parking and turning spaces for The Cottage would be positioned next to No 39's back garden. However, the drive and parking would be set below the level of No 39 and I would expect the brick boundary wall would help lessen vehicular noise effects.
22. No technical noise impact assessment has been provided by the Council nor the appellant. However, I attach significant weight to the fact that the Council's environmental health officer raises no concerns over the noise effects of traffic associated with the development. Bearing in mind the aforementioned fallback position and the low level of traffic likely to be generated by the proposal, the evidence overall indicates that noise from vehicular movements and people using cars would not cause unacceptable disturbance to the occupiers of No 39.
23. The proposed parking and turning areas would be far enough away to avoid vehicle nuisance to the occupiers of any other properties. Therefore, I conclude the development would not cause detriment to the amenity of nearby residences by reason of traffic generation and noise. In these regards, it would accord with LP policy LP29.

Other Matters

24. A considerable number of local residents have raised objections to the proposal, although this is not in itself sound reason to refuse planning permission. However, I have had regard to the concerns raised.

Construction works

25. It is likely that the construction of the development would generate noise and traffic that may affect the living conditions of local residents. I appreciate that this could be disruptive and upsetting. However, given the scale of the development, it is likely that any detrimental impacts would be limited and temporary. Also, a planning condition is suggested that would require mitigation measures to limit the harmful effects of construction activities. Such measures would ensure no unacceptable impacts on the living conditions of local residents during the construction period.
26. There is no evidence to substantiate concerns that construction of the development would adversely affect foundations of existing buildings. In any event, this would be a private matter between the relevant land owners.

Highway and pedestrian safety

27. The development would generate only a modest increase in vehicular movements on Nursery Road. There is no substantive evidence to indicate that the layout and design of the highway creates unsafe conditions for drivers and pedestrians or that its level of usage creates capacity problems. The scheme would include sufficient parking spaces to meet standards and so it is unlikely to lead to extra parking on local roads. In any event, there is no reason to find that local street parking creates unsafe highway conditions. Sufficient space

would be provided for vehicles to turn on the site and a bin collection point close to the access would enable the appropriate pick up of waste.

28. The proposed access would be close to driveways to Nos 39 and 40 but this is not unusual in residential streets. Currently, the boundary wall obstructs visibility for drivers leaving Nos 39 and 40. The removal of part of the wall would improve visibility in these respects. Also, drivers leaving the proposed access would have sufficient sight of other vehicles and pedestrians, including those associated with Nos 39 and 40.
29. The width of the proposed footway across the access would not comply with relevant guidance but it would be wider than parts of the current footpath that adjoins the boundary wall. As such, the scheme would not prejudice the safety of pedestrians or those in wheelchairs. The driveway could be constructed with a suitable incline, even if this means the parking spaces on plot 1 being built slightly above the ground floor level of the proposed house.
30. Moreover, I attach significant weight to the fact that the highway authority raise no objections to the design of the proposed access and the effects of traffic associated with the development. Therefore, I find the proposal would be acceptable in these regards.

Character and appearance

31. The plot 1 house and the extended cottage would be significantly larger than the nearby houses on Nursery Road and would be of a distinctive style and design. However, they would be set down below the level of the road and at the end of the cul de sac and so the development would not be unduly prominent. Also, the incorporation of various different elements would ensure that the bulk of the buildings would not be visually dominant in the street scene.
32. The extensions to The Cottage would be significant in size but they would be lower than the existing roof ridgeline and sympathetic in design. The position of the proposal behind Peel House would not be at odds with the urban grain as The Cottage and the plot 1 house would be seen with the adjoining Nursery Road properties. Overall, the development would not harm the character and appearance of the area.

Non-designated heritage assets

33. Peel House is Victorian and it retains original, decorative features. It is not listed but it is interesting due to its age and architectural qualities. Therefore, it is a non-designated heritage asset. However, the proposed development would have no direct effect on Peel House. Moreover, while the extensions to The Cottage would obstruct sight of Peel House from the back garden, the most attractive views from Witherley Road would be unaffected. As such, the development would not harm the significance of Peel House.
34. The brick boundary wall onto Nursery Road is of a design and condition that clearly reflects its significant age. There is a suggestion that it may be connected to the nearby St Scholastica Convent but it is not listed and it does not lie in a conservation area. There is no dispute that the wall could be removed under permitted development rights. The creation of a new access that requires the removal of part of the wall represents a realistic fallback position in the event that this appeal is dismissed. Also, the removal of the

corner of the wall would improve visibility for drivers leaving Nos 39 and 40 and would provide an opportunity to form wider footways at the end of Nursery Road. Therefore, even if it is considered to be a non-designated heritage asset, any harm caused by the proposed removal of part of the wall would be outweighed by the public benefits of the scheme and other factors.

Other concerns

35. None of the trees on the site are protected by preservation orders and so they could be removed without any consent. In any event, trees are shown to be retained and a planning condition could be imposed to ensure that they are protected during construction.
36. An ecological survey has found no features of particular interest on the land. The retention of trees as proposed and the provision of bat and bird boxes would help maintain and enhance the biodiversity value of the site.
37. Appropriate drainage to serve the development can be secured by condition. The limited level of waste water from the development would not compromise existing foul drainage systems. Also, there is no evidence to show the development would restrict access to foul sewers.
38. There is no indication that the proposed access would be used to serve further development to the east of the site. If such a proposal came forward it would need to be considered in light of the planning policies and other considerations relevant at the time. Allowing this appeal would not set a precedent that is bound to be followed in the determination of any other development proposals.
39. There is little information to support the contention that the development would force the current occupants of The Cottage to leave their home. Therefore, I find no reason to conclude the proposed extensions would result in an interference with anybody's human rights in terms of the rights to peaceful enjoyment of their possessions and to respect for private family life and home.
40. None of the above objections provide grounds to refuse planning permission. As such, they do not affect my overall views on the proposal.

Conditions

41. I have considered the conditions suggested by the Council in light of the tests for conditions set out in the National Planning Policy Framework. Also, I note the conditions suggested by Warwickshire County Council (WCC) as highway authority for the area. Where appropriate, I have amended the wording for precision reasons and to avoid unnecessary pre-commencement conditions.
42. In the interests of clarity and to ensure the development is carried out as shown, I impose a condition that lists the approved drawings. This list takes account of the revised plans upon which the Council made its decision.
43. In the interests of highway safety and to protect living conditions of nearby residents, I include a condition that requires the approval of a construction management plan. I have combined the conditions suggested by the local planning authority and WCC to form a single condition. This also covers the suggested restrictions on hours of construction.
44. A condition is imposed that requires the access to be constructed in accordance with WCC's specifications. Also, a condition is included that requires details of

the access drive, parking and turning facilities to be approved. Such conditions are attached in the interests of highway safety. A separate condition that requires the removal of part of the boundary wall is unnecessary.

45. To protect the environment and safeguard public health a condition on contaminated land is imposed. A condition on levels is included to safeguard the amenity of neighbouring occupiers of property. A condition that requires measures to protect trees is also attached.
46. Pedestrian visibility splays are needed in the interests of highway safety. Details on external materials and hard and soft landscaping are required to ensure the development is of a satisfactory appearance. No justification is provided for the reference in the landscape condition to acoustic fencing and so it is omitted. Bat and bird boxes are required to help enhance biodiversity.
47. A condition on drainage is needed to ensure the satisfactory disposal of surface and foul water. Conditions on bin storage and collection facilities are needed to ensure the appropriate storage and management of waste. To prevent the loss of privacy, I attach conditions that require obscure glazing.
48. To reduce air pollution, conditions on electric vehicle charging points and gas boilers are imposed. A condition that prevents the proposed annexe to The Cottage being occupied as a separate unit of accommodation is needed to ensure future occupiers have satisfactory facilities and levels of privacy.
49. The Council suggests a condition that would in effect remove a range of permitted development rights from the site and the proposed dwelling. However, little justification is provided on why such a condition is necessary. It is unclear how any development allowed under permitted development rights would be harmful to the character of the area or the living conditions at adjoining properties. In the absence of such evidence, the suggested condition is unnecessary.
50. Also, there is no clear justification for the condition suggested by WCC that would prevent gates being installed at the access. I am unconvinced that such a condition is needed for highway safety reasons, given the modest level of traffic that would be generated and the location of the access at the end of a cul de sac. Therefore, this condition has not been imposed.

Conclusion

51. The proposal would be acceptable in terms of the main issue and the other concerns raised do not justify a refusal of planning permission. As such, I conclude the development would accord with LP policies and so the appeal should succeed.

Jonathan Edwards

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings numbered 7826 100, 7826 160E, 7826 250C, 7826 251B, 7826 350E, 7286 351B, 7826 352B and LK.0271.AD/502.
- 3) No development shall commence, including demolition and any site clearance, 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:
 - i) the routing and parking of construction vehicles and of vehicles of site operatives and visitors;
 - ii) wheel washing facilities;
 - iii) storage and loading and unloading of plant and materials used in constructing the development;
 - iv) noise control during construction in accordance with BS 5228-1:2009+A1:2014 Code of practice for noise and vibration control on construction and open sites parts 1 and 2;
 - v) measures to control the emission of dust during construction;
 - vi) details of the contact for any local concerns with the construction activities on the site;
 - vii) a scheme for recycling/disposing of waste resulting from construction works. There shall be no burning of waste construction materials on site.

No demolition, site clearance, construction, site works or fitting out shall take place other than between 08:00 hours and 18:00 hours Mondays to Fridays, and between 08:00 hours and 13:00 hours on Saturdays. There shall be no such activities whatsoever on Sundays, public holidays and bank holidays.
- 4) The vehicular access hereby permitted shall not be first used until the access improvements as shown on the approved plans have been carried out and constructed and a public highway footway crossing has been laid out, all in accordance with the relevant highway authority's standards and specifications.
- 5) Apart from the demolition of the boundary wall and creation of the new access point, no development shall take place until details of the surfacing and levels of the access drive, parking and vehicular manoeuvring areas as shown on the approved plans have been submitted to and approved in writing by the local planning authority. The access drive, parking and turning facilities shall be laid out and constructed in accordance with the approved details prior to the first occupation of the development hereby permitted and shall thereafter be retained for those purposes. The maximum gradient of the access drive shall not exceed 1 in 20 for at least the first 15 metres as measured from the near edge of the public highway carriageway.
- 6) Apart from demolition of the boundary wall and creation of the new access point, no development hereby permitted shall take place until a

preliminary assessment for contaminated land has been undertaken and a findings report submitted to and approved in writing by the local planning authority. If the assessment identifies potential contamination a further detailed investigation shall be carried out and details of remediation measures shall be submitted to and approved in writing by the local planning authority. Details to be approved shall include a timetable for the implementation of remediation works. All remediation works shall be carried out as approved.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. Works shall cease until an investigation and risk assessment have been submitted to and approved in writing by the local planning authority. Where remediation is necessary a remediation scheme also must be submitted to and approved in writing by the local planning authority. Any remediation shall be carried out in accordance with the approved details before development works resume.

Where any remediation works have been carried out a post remediation verification report shall be submitted to and approved in writing by the local planning authority before the development hereby approved is first occupied.

- 7) Apart from demolition of the boundary wall and creation of the new access point, no development hereby permitted shall take place until details of the finished floor levels of the buildings hereby permitted and of the proposed ground levels of the site relative to the finished floor levels and adjoining land levels have been submitted to and approved in writing by the local planning authority. Such details shall be supplemented with locations, cross-sections and appearance of any retaining features required to facilitate the proposed levels. The development shall be constructed in accordance with the approved details.
- 8) The development shall proceed in accordance with the recommendations at paragraph 6.2 and section 7 of the Arboricultural Survey and Impact Assessment [03 March 2020]. Apart from demolition of the boundary wall and creation of the new access point, no development hereby permitted shall be carried out until the no-dig specification and tree protection measures (to all retained trees) have been implemented. Such measures shall be retained throughout the construction period.
- 9) No part of the development hereby permitted shall be first occupied until pedestrian visibility splays of at least 2.4 metres by 2.4 metres have been provided on each side of the permitted access. These measurements are taken from and along the highway boundary. These splays shall thereafter be permanently retained and kept free of all obstacles to visibility over 0.6 metres in height above the level of the public highway footway.
- 10) Prior to their incorporation into the buildings hereby approved, details and/or samples of the facing brick, render, roof tiles, windows, doors, eaves, verges, cills and lintels to be used shall be submitted to and

approved in writing by the local planning authority. The development shall thereafter be constructed using the approved materials.

- 11) Prior to the first occupation of the dwelling or the extensions hereby permitted, a scheme for the provision of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. All hard landscaping shall be carried out in accordance with the approved details before the permitted dwelling or the extensions are first occupied. All planting, seeding or turfing comprised in the approved soft landscaping scheme shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling. Any 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 and thereafter retained for at least the same period.
- 12) Prior to the first occupation of the dwelling hereby permitted on plot 1, details of bat and bird boxes to be installed on the site shall be submitted to and approved in writing by the local planning authority. The approved boxes shall be installed prior to the first occupation of the dwelling and once installed, the measures shall thereafter be retained.
- 13) Prior to the first occupation of any part of the development hereby permitted, drainage plans for the disposal of foul sewage and surface water (including from the hard surfaced elements of the development) shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 14) Prior to the first occupation of the new dwelling hereby permitted, a bin storage facility capable of holding a minimum of 3 x 240 litre wheeled bins shall be provided within plot 1. The storage facility shall remain permanently available for that purpose at all times thereafter.
- 15) The bin collection point detailed on the approved drawing numbered 160E shall be provided prior to the first occupation of the new dwelling hereby permitted and it shall be retained thereafter free from any impediment to its designated use.
- 16) Prior to the first occupation of the new dwelling on plot 1 hereby permitted, the two windows at first floor level on the west facing elevation and serving the bathroom and ensuite bathroom shall be fitted with obscure glass which shall provide a minimum degree of obscurity equivalent to privacy level 4 or higher (as identified in the Pilkington Glass product range). These windows shall be fixed shut except for elements that are situated higher than 1.7m above the adjacent internal floor level. The obscurity required shall be achieved only through the use of obscure glass within the window structure and not by the use of film applied to clear glass. The windows shall be permanently maintained as such thereafter.

- 17) Prior to the first occupation of the extensions to The Cottage hereby permitted, the window at first floor level in the east facing elevation serving the ensuite bathroom to the master bedroom and the first floor window in the west facing elevation serving a staircase shall be fitted with obscure glass which shall provide a minimum degree of obscurity equivalent to privacy level 4 or higher (as identified in the Pilkington Glass product range). These windows shall be fixed shut except for elements that are situated higher than 1.7m above the adjacent internal floor level. The obscurity required shall be achieved only through the use of obscure glass within the window structure and not by the use of film applied to clear glass. The windows shall be permanently maintained as such thereafter.
- 18) Prior to first occupation of the new dwelling on plot 1 hereby permitted, details of electric vehicle charging facilities shall be submitted to and approved in writing by the local planning authority. Prior to the first occupation of the dwelling the approved facilities shall be installed and thereafter they shall be maintained for the life of the development.
- 19) Any gas boilers provided within the new dwelling on plot 1 hereby permitted shall meet a dry NOx emission concentration rate of less than 40mg/kWh.
- 20) The extensions to The Cottage on plot 2 as hereby permitted shall only be occupied in connection with and ancillary to The Cottage and shall not be sold off, sub-let, or used as a separate unit of accommodation.