



Appeal Decision

Site visit carried out on 6 February 2023

by Mrs J A Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

Appeal Ref: APP/Z3445/W/22/3298280

16, Wigginton Road, Tamworth, Staffordshire B79 8RH

- 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 David Sheppard against the decision of Tamworth Borough Council.
 - The application, No 0117/2022, dated 12 February 2022, was refused by a notice dated 11 April 2022.
 - The development proposed is the erection of a dwelling and associated parking.
-

Decision

1. For the reasons that follow, the appeal is allowed and planning permission is granted for the erection of a dwelling and associated parking on land to the rear of 16 Wigginton Road, Tamworth, Staffordshire, in accordance with the terms of the application, No 0117/2022, dated 12 February 2022, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description of development on the application form includes reference to a detached garage. However, following discussion with the Council, an amended plan was submitted prior to determination of the application, showing parking for up to four vehicles at the front of the site and the garage deleted. The description of development set out in the header above reflects the amended scheme.
3. An objector raises a query as to whether all the relevant parties are named on the ownership certificate. The certificate is a legal document and absent any robust evidence that it has not been completed correctly, I have taken it at face value. If it proves, in the event, to be incorrect, that would be a private legal matter for the parties concerned. There are also references to restrictive covenants. Whilst that may implications for implementation were the appeal to succeed, that too is a private matter between the parties. I confirm in both these regards, that I have only had regard to the planning merits of the respective cases.

Main Issues

4. The Council takes no issue with the principle of development on this site, which comprises part of the rear garden to the host property, lying within the urban area of Tamworth, with ready access to local services and facilities, including schools, close to public transport routes. No issue is taken either with the design of the two-storey, four-bedroom dwelling proposed, which would front onto Ashby Road. As noted by the Council, it would fit well with the

established dwellings along this road frontage, employing similar features such as arch-headed windows and projecting forward gables and chimneys . It would be of similar scale to its neighbours and would respect the existing building line.

5. However, the appeal site lies adjacent to a listed building. In light of that, a main issue in this case relates to the effect of the development proposed on the special interest and heritage significance of the grade II* listed Spital Chapel of St James. Although not a reason for refusal, the occupiers of the adjacent property on Ashby Road also raise concerns. An additional main issue in this respect, is the effect of the proposal on the living conditions of the occupiers of that property, having particular regard to daylight/sunlight, outlook, privacy, noise and disturbance.

Reasons for the Decision

6. In November 2021 an application for a dwelling on the appeal site was refused, due solely to impacts on the adjacent listed building¹ – the same reason the appealed application was refused. The scheme has evolved since then in discussion with officers, including removal of a proposed integral garage and replacement with a detached garage, which reduced the width of the proposed dwelling with a consequent increase in the separation between the Chapel and the dwelling. As referred to above, that detached garage has subsequently been deleted from the scheme before me for consideration.

Heritage

7. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be paid to the desirability of preserving, among other things, the setting of listed buildings. Paragraph 195 of the National Planning Policy Framework (the Framework) requires an assessment of the particular significance of any heritage asset that may be affected by a proposal, including by development affecting its setting.
8. Framework paragraph 200 confirms that heritage significance can be harmed, or lost, by development within its setting. The Framework defines setting as the surroundings in which the asset is experienced, recognising that elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
9. Simply seeing a new development in the context of a heritage asset does not mean, necessarily, that there would be harm to its heritage significance, not least because setting is not itself a heritage asset. The importance of setting lies in what it contributes to the significance of the heritage asset or, as referred to in Historic England's publication GPA3: The Setting of Heritage Assets (GPA3), to the ability to appreciate that significance.
10. In considering impact on setting in this case, I am mindful of the staged approach to decision taking set out in GPA3, in particular the approach to cumulative change. GPA3 suggests that where the significance of an asset has been compromised in the past by unsympathetic development affecting its setting, consideration still needs to be given to whether additional change as a

¹¹ Application No 0017/2021

consequence of a proposed development would further detract from the significance of the asset.

11. The first step is to assess what contribution setting currently makes to the heritage significance of the asset (if any), followed by an assessment as to whether the scheme would cause harm to that contribution. That setting would include past changes, whether good, bad or neutral. Should any harm be identified, an assessment would then be required as to whether the scheme proposed, when considered together with any other previous changes, would cause any greater harm than the scheme alone.
12. The grade II* listed Chapel is a modest stone Chantry Chapel building with tile roofs which dates from the mid to late 12th Century, possibly on earlier foundations, with rebuilding in the 13th Century. Following the Reformation, I understand that it was converted to agricultural use, functioning later as a house in the post-Medieval period. On mapping dating from around 1900, it is shown as 'in ruins'. In around 1909-1914, it was substantially restored and re-consecrated as a church. Architecturally, I understand that the building retains some internal features that date from the 16th and 17th Centuries, although at least one entire wall was re-built prior to its re-consecration. It seems to me that the special interest of the Chapel, and thus its heritage significance, derives mainly from its history and rare survival, its form and appearance, and the surviving building fabric.
13. In terms of its setting, none of the structures with which the Chapel was once associated survive. Even the farm it served as a barn is long gone. Instead, the building sits hidden away amongst early to mid-20th century housing on Wigginton Road and Ashby Road, accessed off a narrow, gated, footpath that runs between those roads, alongside the southern boundary of the appeal site. It is not readily seen from any public vantage point.
14. In my view, any heritage significance the Chapel derives from its setting is constrained to its immediate grounds, as opposed to any of the adjoining residential gardens/dwellings. That relationship would be unaffected by the development proposed. Indeed, as confirmed by the Council's Conservation Officer, its concealed location is a positive element of its current setting and would remain unchanged by the development proposed. Moreover, Historic England, the Government's expert advisor on England's heritage, with a statutory role in the planning system, raises no objections. I am content in this regard, that the development proposed would not result in any harm to the heritage significance of the listed Chapel, nor to any appreciation thereof. Even when considered together with previous changes, I find that there would be no greater harm as a consequence of the development proposed. There would be no conflict, in this regard, with policy EN6 of the Tamworth Local Plan 2006-2031, or Section 16 of the Framework, which together seek to protect such interests.
15. The County Archaeologist indicates that the appeal site has some archaeological potential to provide more information about the Chapel and the Medieval suburbs of Tamworth. No objections are raised in this regard though, subject to a watching brief and post-fieldwork reporting. That could be secured by condition.

Living Conditions

16. No 23 Ashby Road, a detached, two storey residential property, lies adjacent to the appeal site, to the north/north-east of the location for the proposed dwelling. At ground floor, four small windows within the side (south-west) elevation face the appeal site, as do two similar size windows at first floor level. The windows serve a lounge and dining room at ground floor (two to each room), and two bedrooms, including the master bedroom, above (one to each room).
17. The side wall of the dwelling proposed, whilst parallel to the site boundary, would not be parallel with the side wall of No 23, which is angled slightly away from the boundary. At its closest, the proposed dwelling would be some 8.5 metres to the south/south-west of the nearest corner of the house at No 23,² the separation increasing slightly towards the rear. A mature hedge and taller plants/trees define the boundary between the two properties. During my site visit, I saw that that vegetation already shades the side garden at No 23 (described as a patio by the occupiers) and the ground floor side facing windows to some extent.
18. In relation to light, the Council's Design SPD³ seeks to prevent unacceptable loss of light to *principal* glazed openings (my emphasis). I am mindful, in this regard, that the lounge at No 23 is also served by a much larger, south-east (front) facing window, with the dining room also served by a pair of rear (north-west) facing, fully glazed French doors with side windows. The light to these windows would be unaffected by the development proposed. Similarly, the two bedrooms at first floor level with side facing windows also have larger windows facing to the front and the rear, the light to which would similarly be unaffected. On balance, whilst the proposed dwelling may well affect sunlight/daylight to the side facing windows, particularly in winter, the main source of sunlight and daylight to the rooms would be unaffected. Even taking account of the reference to the first floor front facing bedroom being in use throughout the day on most days for health reasons, I find no material harm in these regards.
19. In relation to outlook, it is well established that there is no right to a view. No 23 is taller than the proposed dwelling, which would be sited on lower ground. Whilst the proposed dwelling would be seen from the side facing windows, the distance between the two side elevations, combined with the fact that the outlook from the main windows to the front and rear would be unaffected, would be sufficient in my view, to ensure that the dwelling would not be seen as unduly overbearing or overly dominant.
20. In relation to overlooking and privacy, the appeal site is at a lower level than No 23. A utility room door to the proposed dwelling would be located on the side facing ground floor elevation, but existing boundary vegetation and/or future boundary treatment here would be sufficient to prevent any overlooking. At first floor, the only side facing window would be to a bathroom. A condition could ensure that it was obscure glazed with only top-hung opening lights.
21. As for noise and disturbance, the appeal site comprises the rear garden to an existing dwelling. The rear garden to No 23 would continue to adjoin a rear garden, albeit the rear garden to the dwelling proposed. The introduction of a

² Officer's report paragraph 6.4.3

³ Supplementary Planning Document

dwelling here, adjacent to existing housing in a residential area would not, in my view, unduly compromise the living conditions of adjoining occupiers in this regard. Similarly, the provision of on-site parking at the front of the proposed dwelling in this residential context, adjacent to the B5493 (Ashby Road), which would be little different from the arrangement at No 23, which has sufficient space for the parking of a number of vehicles at the front (as does the neighbouring property) would not create unacceptable harm in terms of noise and disturbance. As the proposal is for a single dwelling, the construction period, and any related noise and disturbance, is likely to be short lived.

22. To conclude on this issue, I find no material harm to the living conditions of the occupiers of No 23 Ashby Road as a consequence of the development proposed. There would be no conflict, in this regard, with policy EN5 of the Local Plan, which seeks to protect such interests, nor with the Council's Design SPD.

Other Matters

23. The neighbouring occupiers reference implications for their Human Rights and for the congregation of the adjacent Chapel, although no specific rights were cited. Article 8 of the First Protocol of the Human Rights Act 1998 relates to the right for respect to private and family life. In light of my findings above, I am not persuaded that the home, family life or privacy of the neighbouring occupiers would be significantly diminished should the development proposed go ahead. The degree of interference that would be caused therefore, would be insufficient to give rise to a violation of rights under Article 8 of the First Protocol.
24. Article 9 relates to rights to freedom of thought, belief and religion. The development proposed would not impede the rights of persons to take part in religious worship at the Chapel and, given the distance separation and context, adjacent to the B5493 (Ashby Road), I am satisfied that the parking of vehicles at the front of the proposed dwelling would not have any material impact in terms of noise or disturbance on the congregation. In essence, I find nothing to indicate that there would be a violation of rights under Article 9 in this regard.
25. There is reference in the representations to soil compaction and shrinkage. However, soil conditions on the site have more of a bearing on construction techniques and Building Regulations, as opposed to being a material planning consideration. Whilst there is also reference to bats using the site for foraging etc, there is no suggestion that the development would affect a known roost. In any event, bats are protected under other legislation. Assertions about wind tunnelling and air flow around No 23 are unsupported by any technical evidence.

Conclusion and Conditions

26. For the reasons set out above, I conclude on balance that the appeal should succeed.
27. In addition to the standard time limit on commencement of development (1), it is necessary to specify the approved plans to create certainty for all parties (2).

28. Conditions 3 - 6 are necessarily worded as pre-commencement conditions, since the matters they cover could have implications for the construction process from the outset.
29. Details of all means of enclosure are required in the interests of visual amenity and privacy (3). Details of external materials are required in the interest of visual amenity (4).
30. A scheme of archaeological investigation is required in light of the potential for archaeology of the site, given its proximity to the Chapel. (5)
31. Boundary vegetation needs to be protected during construction in the interests of visual amenity, biodiversity and privacy. (6) It is also necessary, in the interest of privacy, to ensure that the first floor side facing bathroom window is obscure glazed with only top-hung opening lights. (7)
32. The Council suggests that a number of permitted development rights should be removed. However, paragraph 54 of the Framework makes it clear that such conditions should not be used unless there is clear justification to do so. The Planning Practice Guidance also advises that conditions restricting the future exercise of permitted development rights may not pass the test of reasonableness or necessity.
33. In light of the slightly contrived shape of the rear garden and the potential for impact on the living conditions of adjoining occupiers, together with proximity to the listed Chapel, I agree that there is justification for the removal of permitted development rights in relation to Classes A (enlargement), AA (additional storey), B and C (alterations/extensions to the roof) and E (curtilage buildings) of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015. I am not persuaded however, that development under the provisions of Classes D (porches), F (hardsurfacing) or G (chimney/flue) would be likely to have any materially adverse impacts on those interests and I have not included them in the condition. In relation to Part 2 of the same schedule, I agree that rights relating to Class A (gates, walls, fences or other means of enclosure) and Class C (exterior painting) are justified in the circumstances.

Jennifer A Vyse
INSPECTOR

SCHEDULE OF CONDITIONS

APP/Z3445/W/22/3298280

Land to the rear of 16 Wigginton Road, Tamworth, Staffordshire

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with approved Plan No 9649.03 rev C, dated Feb 22.
- 3) Prior to the commencement of development, details of all walls, fences and other means of enclosure shall be submitted to and approved in writing by the local planning authority. The means of enclosure shall be erected in accordance with the approved details prior to first occupation of the dwelling hereby permitted and shall be retained thereafter.
- 4) Prior to the commencement of development, details of all external materials shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place, including works of site clearance, unless a written scheme of archaeological investigation ("the Scheme") has been submitted to and approved in writing by the local planning authority. The Scheme shall include details of a programme of archaeological works to be carried out within the site, including post-fieldwork reporting and appropriate publication. The archaeological site work shall thereafter be implemented in full in accordance with the approved Scheme. The dwelling shall not be occupied until the site investigation and post-fieldwork assessment has been completed in accordance with the approved Scheme and provision for analysis, publication and dissemination of the results and archive deposition has been secured.
- 6) No site clearance, preparatory works or development shall take place until a scheme for the protection of all existing boundary vegetation shown on Dwg No 9649.03 rev C, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved before any equipment, machinery or materials are brought onto the site, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any protected area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the Department.
- 7) The dwelling hereby permitted shall not be occupied until the first floor bathroom window on the side (north-east elevation) has been fitted with obscure glazing (level 3 or higher on the Pilkington scale of privacy or equivalent), with top hung opening lights only. Once installed, the obscure glazing and opening light arrangement shall be retained thereafter.
- 8) No development falling within Part (1) Classes (A, AA, B, C and E) and Part (2) Classes (A, C) of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification) shall be carried out.

- 9) The development hereby permitted shall not be occupied until the access and parking area has been provided and surfaced in a bound and porous material in accordance with approved Plan No 9649.03 Rev C. It shall be retained thereafter for the intended purpose.

-----END OF SCHEDULE-----