



Appeal Decision

Site visit made on 2 May 2023

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th June 2023

Appeal Ref: APP/C1055/D/23/3316771

103 Belper Road, Derby City, Derby DE1 3ES

- 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 Mrs Alizanne Mohr against the decision of Derby City Council.
 - The application Ref 22/00825/FUL, dated 23 May 2022, was refused by notice dated 24 November 2022.
 - The development proposed is erection of boundary fence – retrospective application.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. While a fence was on site at the time of my visit, it does not replicate that shown on the submitted plans. I have therefore looked at the scheme as a proposed development on the basis of the plans provided.
3. I have taken the description of development from the Council's decision notice as this is a more concise version of the appellant's original description. The appellant has adopted this description in their appeal form, confirming it is the development they are seeking planning permission for.
4. In determining this appeal involving development within a conservation area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issue

5. The main issue is whether the development would preserve or enhance the character or appearance of the Strutt's Park Conservation Area.

Reasons

6. The Strutt's Park Conservation Area (CA) is predominately a residential area, with a mix of terrace, semi-detached and detached properties of varying styles. Properties in the immediate vicinity of 103 Belper Road are predominately large, detached period properties, set back from the highway, which creates an open aspect to this section of the CA. Boundary treatments in this area comprise primarily of low stone walls and hedges, with some timber fencing present. The trees and hedgerows contribute to the verdant, open character of this part of the CA. The conservation area's significance, insofar as relevant to this case, is derived from open frontages, verdant character, landscaping and boundary treatments and large properties set back from the highway.

7. 103 Belper Road is a large, detached property, set in substantial grounds. Due to the property's location on a curved section of Belper Road, it has a substantial frontage with the highway. The frontage is defined by a low stone wall that runs almost its entire length. There are a number of mature trees and other vegetation within the grounds of no. 103. The property and its grounds are prominent due to their proximity to Belper Road and elevated position. Due to its size, verdant grounds and stone boundary wall, the property positively contributes to the character and appearance of the CA.
8. Notwithstanding the relatively modest scale of the proposal and that its effect may be localised, given the prominent location, overall height and amount of fencing, it would result in a harsh, dominant and visually intrusive form of development. This is at odds with the prevailing character and appearance of the CA, and thus would be an incongruous feature at this generally verdant and open location. This harmful effect would be further exacerbated due to its elevated height. That the materials of the fence are contended to be sustainable and high-quality, would weather over time and would be well-maintained does not alleviate my concerns in this respect.
9. I have had regard to the layout of the fencing shown on plan reference no. TQRQM22143142207443. The difference between the layout of the as built fence and that shown on the plan is minor. Therefore, the erected fence is also at odds with the prevailing character and appearance of the CA, for the same reasons outlined above.
10. I understand that the appellant's long-term intention is to replace the fence with hedging, which takes time to mature and provide adequate security. No further details regarding the hedging, including timescales, have been submitted. I therefore have to base my decision on the basis of the plans submitted.
11. It has been brought to my attention that there are other fences within the area and I observed a number during my site visit. I have limited information before me relating to the history of these other fences. I note that the Council have stated two fences brought to their attention were unauthorised. Notwithstanding this, the fences are not directly comparable, due to their location, design, prominence and overall height.
12. The Council have only raised concerns in relation to the section of fencing along the frontage boundary only. The second section of fencing, as shown on plan reference no. TQRQM22143142207443, does not, due to it being set back significantly into the site, harm the character or appearance of the CA.
13. For the reasons above, I conclude that the development fails to preserve or enhance the character or appearance of the Strutt's Park Conservation Area. As a result, the development results in harm to the significance of the designated heritage asset.
14. Paragraph 199 of the National Planning Policy Framework (the Framework) states, amongst other things, that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

15. Nevertheless, the harm to the character and appearance of the conservation area in this instance would be less than substantial.
16. Paragraph 202 of the Framework states that if a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, then this harm should be weighed against the public benefits of the proposal.
17. No. 103 has recently been converted into residential use and I understand that the fencing meets the needs of the present occupants, by improving privacy, security and usability of the outdoor area. I understand that the green and open feel of the site, with public views into the garden space, was appropriate when the building was under commercial use, but it is not desirable nor appropriate for a residential use. It has been highlighted to me that keeping children out of view is paramount to their safety. Therefore, the fence has been erected, in part, for the best interests of the children, which is a primary consideration in this appeal; no other issue is intrinsically more important.
18. I note that the Highway Authority did not raise an objection to the development and confirmed the fence may well prevent any unnecessary accidents involving children or animals located at the property.
19. During my site visit I observed a number of trees within the grounds of no. 103. There is limited evidence before me which demonstrates why the trees on site need protection, why the location and type of fencing meets these protection needs and why a different location would be more harmful.
20. I have limited evidence before me to demonstrate that the safety, security and tree concerns could not have been met through different options, with appropriately designed boundary treatment.
21. The reuse of a dilapidated building and its associated benefits to the street and Strutt's Park are matters that weigh in favour of the proposal.
22. The benefits before me are primarily private rather than public. Even if these benefits were all considered to be public benefits rather than private, and having taken account of the best interests of the children, the benefits would be insufficient to outweigh the great weight I must attach to the harm I have identified to the significance of the designated heritage asset.
23. I note that the proposals are intended to provide suitable boundary treatment for the safety and privacy of children. Therefore, I have had regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. The duty includes having regard to the need to eliminate discrimination, harassment and advance equality of opportunity between those sharing relevant protected characteristics and those who do not. Whilst I am mindful of the needs of the children, it has not been demonstrated that the needs cannot be met by a less harmful scheme. Therefore, the PSED do not outweigh the harm that I have identified, and following careful consideration of these matters, I am satisfied that the impact of dismissing this appeal is proportionate and justified.
24. For the above reasons, the proposed development would not preserve or enhance the character or appearance of the Strutt's Park Conservation Area. This conflicts with Policies CP3, CP4 and CP20 of the Derby City Local Plan Part 1 Core Strategy 2017 (CS), saved Policy E18 of the City of Derby Local Plan Review 2006 (LP) and the guidance in the Framework. Collectively, these

policies and guidance document seek, amongst other things, to ensure development responds positively to heritage assets, preserve or enhance conservation areas and makes a positive contribution towards the character of neighbourhoods. The Framework seeks to protect and enhance the historic environment.

Other Matters

25. I note that there have been no objections from interested parties. However, the absence of objections does not outweigh the harm I have identified.
26. It has been drawn to my attention that the fence would not result in any overshadowing or overbearing impacts and would not harm the residential amenities of the surrounding residents. The Council have raised no concerns in this regard. I see no reason to disagree, having regards to the location and orientation of neighbouring properties and their proximity to the fence. This is however a neutral factor.
27. Policy E19 of the LP, which seeks to protect buildings of local importance, has been referred to in the Council's reason for refusal. While I consider that no. 103 and its grounds contribute towards the character of the CA, there is no substantive evidence before me to demonstrate that the building is a non-designated heritage asset, or that it is identified on the Council's Local List of buildings of local architectural or historical importance. Notwithstanding this, I have found harm to the CA and I am dismissing on that basis.

Conclusion

28. For the above reasons, the development conflicts with the development plan as a whole. There are no material considerations that indicate I should conclude other than in accordance with it. Consequently, the appeal is dismissed.

S Pearce

INSPECTOR