



Appeal Decision

Site visit made on 8 August 2023

by J Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2023

Appeal Ref: APP/C3105/W/23/3314296

Allotment Gardens West of Roebuck Inn and South-East of The Blinking Owl PH, Banbury Road, North Newington OX15 6AB

- 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 Christopher McNally against the decision of Cherwell District Council.
- The application Ref 21/01561/F, dated 3 May 2021, was refused by notice dated 12 August 2022.
- The development proposed is the erection of one detached dwelling and detached garage.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - whether the proposal would preserve the setting and significance of the listed buildings and the effect of the proposed development on the setting of the North Newington Conservation Area (CA); and
 - the effect of the proposal on highway safety.

Reasons

Effect on Heritage Assets

Listed buildings.

3. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) requires me to have special regard to the desirability of preserving the building, its setting or any features of special architectural or historic interest which it possesses. The National Planning Policy Framework (the Framework) is also clear that great weight should be given to a designated heritage asset's conservation and that its significance can be harmed by development within its setting.
4. The Roebuck, now a private house, is a grade II listed building located a short distance to the east of the appeal site. It has several interesting period details including finely jointed coursed ironstone walls and a steeply pitched slate roof. The Baker's Arms Public House, now trading as The Blinking Owl Public House, is a grade II listed building located immediately to the north west of the appeal site. It is constructed of square coursed ironstone, with stone quoins, and has a steep pitched slate roof. It is 2 storey in height with an attic. The entrance has

a moulded stone frame and is flanked by 20th century mullioned and transomed windows with stone flat arches. The significance of both properties derives from their aesthetic, evidential and communal value.

5. The proposed dwelling would be located on the opposite side of Banbury Road to The Roebuck, on the eastern entrance to the village. Its raised position relative to the road, together with its height and design would make the proposed dwelling a noticeable feature within the streetscene. Notwithstanding their physical separation the two buildings would compete for prominence and as a result the setting of the listed building would be diminished. Consequently, the proposal would cause significant harm to the setting of the listed building.
6. The Blinking Owl PH is at a lower level than the proposed site, and views from the east are obscured to a degree as a result of the local topography and landscape features. Moreover, the proposed dwelling would be set back from the road with the intervening space being retained as open land. Therefore, in my view, any impact on the setting of this listed building and its significance would be modest.
7. In conclusion, the proposal would result in a high level of residual harm to the setting and significance of the listed buildings. It would therefore fail to preserve the setting of the listed building contrary to the expectations of s66(1) of the Act. This harmful impact would also be contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 (the Local Plan) and saved policy C28 of the Cherwell Local Plan 1996 (Saved Policy), which, amongst other matters, seeks developments of a high standard that conserve, sustain and enhance designated heritage assets, and their settings.

Conservation Area

8. Section 72(1) of the Act places a duty on me to consider the effect of the proposal on character or appearance of the conservation area. In doing so I am required to consider the effect on the conservation area as a whole.
9. North Newington lies just over 2 miles south west of Banbury and retains the character of a small rural village settlement. Its origins are believed to be medieval, although the village centre is now predominantly made up of 17th century cottages. The 19th century saw further expansion. In the 20th century a small number of properties constructed in the area of between Park and School Lane. The design and layout of the later additions were contemporary to their age, sitting within their own plots, with garages and front gardens which offered off road parking. Their style is in stark contrast to the 17th century smaller houses that are built along the road edge in a terrace form.
10. The historic core of the village is now located around the small green, which provides the only open land within the heart of the settlement. The older cottages on the southern side of Main Road sit on the roadside and are generally low level 2 storey buildings. They are mostly constructed in local ironstone, though a small amount of red brick has also been used. Thatch, with stone slate for the more prestigious buildings, was the roofing material used within the village.

11. The proposed dwelling would be clearly visible on higher ground when approaching the village centre from the east. Notwithstanding the use of natural local stone and slate, and reduced ground levels, the proposed 2 storey house would still appear as a prominent building when viewed from Banbury Road. Moreover, it would be significantly higher than the neighbouring bungalow, Stonecroft, and would protrude above the skyline formed by the surrounding hills. Consequently, it would appear as discordant and incongruous feature within the streetscene.
12. Similarly, when viewed from the north, adjacent to the junction of Banbury Road with Park Lane, the proposed dwelling would appear to tower above the surrounding properties, which are mostly low level buildings set within the slopes of the valley. The raised site, combined with the height of the proposed dwelling, would further accentuate the proposed development's prominence.
13. Overall, I conclude that there would be moderate harm to the significance of the CA. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the CA contrary to the expectations of the Act. The proposal would also be contrary to Policy ESD15 of the Local Plan and Saved Policy C28 as set out above.

Heritage balance

14. I have found that there would be limited harm to the setting/significance of the listed building and moderate harm to the conservation area. Therefore, the harm would be 'less than substantial' within the meaning of the Framework. Paragraph 202 of the Framework requires such harm to be weighed against the public benefits of the proposal. However, less than substantial harm should not necessarily be equated with less than substantial planning objection, especially when the statutory test in the Act have not been met.
15. The appeal scheme would increase the supply of housing at a point in time when the Council are unable to demonstrate a five-year housing land supply. The shortfall is acute at around 3.5 years. The provision of one dwelling would be a small boost to housing supply but given the housing supply deficit I afford this limited weight as a public benefit.
16. There would also be economic benefits from the construction of the proposed dwelling and subsequent occupation of the building, and this is capable of being a public benefit. I give this matter modest weight.
17. Paragraph 199 of the Framework states that great weight should be given to the conservation of designated heritage assets. Considerable importance and weight must be given to the special regard I must pay to preserving the listed building's setting and the character or appearance of the CA¹. This does not amount to a direction to refuse proposals that harm, and thus fail to preserve, designated heritage assets, but it provides a strong presumption in favour of preservation. In this context, I find that the high level of harm to the setting of the Grade II listed buildings and the failure to preserve or enhance the character or appearance of the CA that would arise from the proposal would not be outweighed by its moderate public benefits. Accordingly, there would be a conflict with Paragraph 200 of the Framework as harm to a designated

¹ See Section 66 (1) and 72(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990

heritage asset would not have clear and convincing justification. The development would therefore fail to satisfy the requirements of the Act, the Framework and the LP.

18. Given my findings in respect of Paragraphs 199 and 200 of the Framework, there are clear reasons for refusing the proposed development. Therefore, it is unnecessary to consider whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. This is because Paragraph 11d) ii. of the Framework, by virtue of Paragraph 11 d) i. and footnote 7, does not apply.

Highway safety

19. Vehicular and pedestrian access to the appeal site is proposed along The Pound. The Pound is a long narrow undulating and unsurfaced track that links the site to Main Street. It serves a small number of dwellings and provides access to neighbouring agricultural land. A public footpath, Footpath 18, runs along The Pound, with a further footpath, Footpath 11, crossing the proposed access route adjacent to the western boundary of the appeal site.
20. The main parties, and interested third parties, disagree over whether the appellant has vehicular right of access over The Pound. Moreover, even if vehicular rights do exist, the parties dispute whether these rights extend to providing vehicular access for a new dwelling. I have no substantive evidence before me to clarify the position in this regard.
21. Notwithstanding the above, the appellant has complied with the requirements to serve the relevant ownership certificate, including placing an advertisement in a newspaper. Although I am mindful that clarity regarding the status of The Pound may result in disputes over land ownership, it is not the role of the planning system to intervene on matters relating to legal constraints that may exist through other legislation. Consequently, my considerations will be based on the planning merits of the proposal.
22. I note that the Highway Authority (HA) have raised no objections to the proposal, subject to imposition of conditions relating to a Construction Traffic Management Plan. In the event that I was to allow the appeal I am required to give consideration as to whether such a condition would meet the statutory tests. I have also taken into account the HA's view that the proposal would still be acceptable even if vehicular access to the appeal site was not available along The Pound, which would result in parking associated with the development taking place on nearby roads.
23. On my site visit I paid particular attention to the traffic conditions that existed along Banbury Road, Main Street and the adjoining streets. I noted that there was a steady but light, flow of traffic on the through roads and limited on-street parking was evident. Properties in the locality, including those in Park Lane, had limited off-road parking, and as a result were reliant on on-street parking to meet their everyday needs. That said, there still appeared to be some spare capacity available, which would be accessible to future occupiers of the proposed development, via Footpath 11, within a short distance of the appeal site. I acknowledge that these observations can only provide a snapshot of traffic conditions at a particular time of day, however, I have no evidence to suggest that they are not representative of typical traffic conditions.

24. I acknowledge that a reliance on on-street parking to serve the proposed development would not provide an ideal situation and would require future occupiers and visitors to navigate the narrow, sloping, unsurfaced and unlit public footpath on their journey from Banbury Road to the appeal site. Nonetheless, it would provide an acceptable solution, that would not compromise highway safety, in the event that vehicular access could not be secured along The Pound.
25. Accordingly, on this main issue, I conclude that the proposed development would not have an adverse impact on highway safety and as a result would not conflict with policy ESD of the Local Plan. This policy seeks, amongst other matters, a holistic approach to the design of the public realm to create high quality and multi-functional streets and places that promotes pedestrian movement and integrates different modes of transport, parking and servicing. It is also consistent with paragraph 111 of the Framework which states that Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matter

26. The appellant has drawn my attention to a planning application, reference 22/03103/PIP, that has been approved for the development of a site at Land Adjacent to 5 Leys Close, Wroxton, a rural village a few miles from the appeal site. I have carefully considered the contents of the decision and the officers report, with particular reference to matters relating to 'Highway Impact.' From the limited evidence before me it would appear that the proposal in that instance had pedestrian access onto a recognised highway and would be reliant on on-street parking. Furthermore, the application was supported by a parking survey. Consequently, the context within which that application was determined is different to the situation that is now before me. The grant of permission in that instance does not provide justification for development that would fail to preserve the setting of heritage assets or address issues relating to character and appearance.

Conclusion

27. I have found no conflict with the development plan with regards to the impact of the proposal on highway safety. However, the proposal would fail to preserve the setting of the nearby listed building and would fail to preserve or enhance the character or appearance of the CA. There are no other considerations or public benefits that would outweigh this harm. The proposal would therefore fail to satisfy the requirements of the Act, the Framework and the development plan.
28. There are no other relevant material considerations worthy of sufficient weight that indicate the application should be determined other than in accordance with the development plan as a whole. For the reasons given above, I therefore conclude that the appeal should be dismissed.

J Gunn

INSPECTOR