



Appeal Decision

Site visit made on 13 September 2023

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2023

Appeal Ref: APP/W2465/W/22/3305526

7 Holmwood Drive, Leicester LE3 9LG

- 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 Russ Smith against the decision of Leicester City Council.
 - The application Ref 20220462, dated 25 February 2022, was refused by notice dated 10 August 2022.
 - The development proposed is described as 'The conversion of the existing Residential dwelling into Proposed Six self-contained Flats (Domiciliary care units)'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The first reason for refusal references an overbearing and dominating impact on the surrounding residential properties of Nos 3, 5 and 9 Holmwood Drive. Having considered the Council's case, this concern relates to the character and appearance of the area and not the living conditions of the occupiers of these properties. As such, I consider the main issues to be:
 - a) the effect of the proposed development upon the character and appearance of the area, including the effect on trees, and
 - b) whether the proposed development would provide satisfactory living conditions for the future occupiers of Flats 1 and 4, with regards to privacy, outlook and light.

Reasons

Character and appearance

3. The appeal site contains a detached dormer bungalow, set back from the road, in a similar manner to other properties to this side of Holmwood Drive. The dormer bungalow has a garden and parking area to the front, with further garden areas to the side and rear. Two large trees are located within the front garden and these are the subject of a Tree Preservation Order. The property shares an access with a two-storey block of flats at the rear. The surrounding area contains a mix of properties in terms of size and style. The set back of properties to the west of Holmwood Drive, along with the presence of mature trees, both within the street and in private gardens, gives the area a leafy and spacious character, albeit this is not so pronounced to the opposite side of the road. The trees within the appeal site make a positive contribution to this leafy character.

4. The proposed development would increase the scale of the existing bungalow significantly by extending upwards and to the side. Additionally, it would bring the building much closer to the southern boundary of the plot. As a result, it would appear less spacious in its immediate setting than the existing building. Its proportions would be large in comparison to the bungalows at Nos 3 and 5 Holmwood Drive and those properties directly opposite.
5. However, the set-back of the building within the plot would be retained, as would the access road to the side. This would ensure that the proposed development would not have a cramped appearance. Whilst it would be larger in scale than the aforementioned bungalows, the separation provided by the access road would ensure that the building did not appear overly large in relation to these dwellings. Further, it would be similar in scale to other buildings in the locality, No 15 Holmwood Drive for example, and it would be smaller than some, such as the block of flats at the rear. For these reasons, the resultant building, as extended, would not appear inconsistent or inappropriate in scale in this context. The proposed design and materials would be acceptable given the existing mix of styles in the area.
6. As such, in terms of its design, siting and massing, the building would not harm the character and appearance of the area. In this respect, the proposal would comply with CS Policy 3 of the Leicester City Local Development Framework Core Strategy, adopted July 2014 (CS) and saved Policy H07 of the City of Leicester Local Plan, adopted January 2006 (LP), which collectively, and amongst other matters, require that new development contributes positively to the character and appearance of the local natural and built environment, and is appropriate to local setting and context. Consequently, there is no conflict with CS Policy 6, which requires new housing to be delivered in accordance with CS Policy 3.
7. However, saved LP Policy UD06, seeks to ensure that new development does not result in the loss of trees that have amenity value, whilst paragraph 131 of the National Planning Policy Framework (NPPF) recognises that trees make an important contribution to the character and quality of urban environments. The NPPF goes on to state that existing trees should be retained wherever possible.
8. Whilst the plans indicate that the two large trees in the front garden would be retained, the proposed extension to the side of the host dwelling would be within close proximity to one of these trees. Additionally, it appears that the same tree would restrict access to some parking bays, thereby requiring its removal. The Council has also raised concerns with the proximity of further trees at No 9 Holmwood Drive, close to the shared boundary. No arboricultural impact assessment has been provided with the appeal scheme and so I cannot conclude that the proposed development would not result in significant damage or loss of the protected tree, or others. The loss of this tree would be detrimental to visual amenity, given the positive contribution that trees make to the leafy character of the area.
9. Whilst the proposed plans indicate a new tree positioned to the southeast corner of the site, my understanding is that this is replacement planting for the removal of a protected tree that has previously been granted permission, rather than forming any compensatory landscape works associated with the appeal scheme.

10. Saved LP Policy UD06 goes on to state that the loss of landscape features that have amenity value will only be supported if this would be in the interests of landscape management, or the desirability of the proposed development outweighs the amenity value. I will return to this matter later in my decision.

Living conditions for the future occupiers

11. The combined lounge and kitchen/diner of proposed Flat 1 would be located at ground floor level to the rear of the building. Three windows and patio doors are proposed to serve this room within the side and rear elevation. Fencing and mature planting along the shared boundary with No 9 Holmwood Drive would limit the outlook from the proposed side windows, so obscure glazing would not be necessary to retain the privacy of the neighbour to the south. In addition to the limited outlook to the side windows, the mature planting would also result in some loss of direct sunlight to side and rear openings.
12. However, given the number of windows proposed and the more open aspect that would be available to windows facing to the rear, it seems likely that overall, there would be a sufficient degree of natural light available to this room. The proposed doors and rear window would look onto a shared private amenity space, rather than directly onto the trees. Any fencing along the rear boundary would be at a sufficient distance to ensure it would not impact significantly on the outlook of future occupiers.
13. With regards to privacy, the Council's Supplementary Planning Document, Residential Amenity, adopted February 2008 (SPD), suggests that a separation distance of 21m should be achieved between elevations containing principal windows. The separation distance between proposed Flat 1 and the existing flats at the rear would be approximately 20-21m, falling short of the SPD guidance. However, a comparison of the existing and proposed plans indicates that the rear elevation of the host property achieves a similar separation distance and serves a kitchen that is of a size capable of providing dining facilities. Noting this, as well as the limited extent of the shortfall identified in relation to the separation distances of the SPD, I consider that future occupiers of proposed Flat 1 would be afforded an acceptable standard of privacy, as would existing occupiers of the flats at the rear.
14. Proposed Flat 4 would be positioned directly above proposed Flat 1 and would have a similar internal arrangement. No concerns are raised by the Council in relation to natural light. Given the proximity of the proposed first floor side windows to the shared boundary with No 9, there would be the potential for a loss of privacy for the occupiers of this neighbouring property and so I agree with the Council that it would be necessary to impose a condition securing obscure glazing to these side windows, if the appeal were allowed. The proposed plans indicate obscure glazing to rear windows also, which in combination would result in an unacceptable outlook for future occupiers of this flat.
15. However, the appellant's Statement of Case indicates that obscure glazing would only be provided to the rear if it was considered necessary. Proposed Flat 4 and Flat 1 would have the same separation distance from the existing flats to the rear, and for the reasons outlined above, I have found this would provide an acceptable standard of privacy for future occupiers of Flat 1 and the existing residents of the flats at the rear. The same would apply to Flat 4 and so obscure glazing to these rear windows would be unnecessary. As a result,

the combined lounge and kitchen/diner for Flat 4 would be afforded an acceptable outlook.

16. To conclude on this second main issue, the proposal would provide satisfactory living conditions for the future occupiers. The proposal would therefore comply with saved LP Policy H07, which amongst other matters, seeks to ensure that new development for the conversion of existing buildings to flats, results in the creation of a satisfactory living environment. There would be some conflict with the advice contained in the SPD, however, this is guidance and not policy. Further, the proposal would meet the requirements of NPPF Paragraph 130 insofar as it requires new development to provide a high standard of amenity for existing and future users.

Other Matters

17. A tunnel ventilation shaft to east of No 9 Holmwood Drive is grade II listed and lies to the south of the appeal site. The Council also refers to the locally listed Glenfield Tunnel within which the ventilations shaft is located and which constitutes a non-designated heritage asset (NDHA). I have only limited information relating to the significance of these heritage assets. However, the Council indicates that there is an established landscape buffer to the siting of these assets. Further, existing housing forms an established part of the setting and the proposed development would not alter this, and so I am satisfied that the setting of this listed building would be preserved along with any significance derived from it, as well as the setting and significance of the NDHA.
18. The Council's Officer Report states that acceptability of the proposed development in principle is qualified, because CS Policy 6 requires a mix of housing types including larger family housing (4+ bedrooms), and that the conversion of existing large houses to flats will be resisted where it would still be appropriate for family use. However, this is not a specific reason for refusal on the Decision Notice and the Council has not provided any further evidence in this regard. As such, I have not considered this matter further.
19. The proposal would provide a net gain of five residential units, in an accessible location, making a positive contribution towards housing supply. As the appeal scheme is for domiciliary care units, it would provide for the delivery of specific housing types to meet the needs of different groups in the community, in accordance with the requirements of CS Policy 6, which supports such provision. The information before me indicates that the scheme has been designed to be accessible to all and shared amenity space would be safe and inclusive. The scale of the development is small, which limits the weight afforded to these benefits. The Nationally Described Space Standards are met, however, this is a neutral matter.

Planning Balance

20. Overall, I have found that the living conditions of future occupiers would be acceptable, complying with the requirements of saved LP Policy H07. The design, siting and massing of the proposed building within the streetscene would not harm the character and appearance of the area, complying with the requirements of CS Policies 3 and 6, and saved LP Policy H07. However, I am unable to conclude from the evidence before me that the appeal scheme would

secure the long term future of a protected tree, which is of visual amenity value.

21. Saved LP Policy UD06 only supports the loss of landscape features that have amenity value, if this is outweighed by the desirability of the proposed development. As noted above, the proposal would deliver additional housing, to meet specific needs, in an accessible location. However, it is feasible that the same or similar benefits could be achieved, whilst retaining this tree and the amenity value derived from it. As such, I cannot conclude that the desirability of the proposed development outweighs the harm, and so the proposal would conflict with saved LP Policy UD06.
22. Consequently, there is conflict with the Development Plan when taken as a whole. The most relevant policies for determination of the proposal are broadly consistent with the NPPF.
23. The local planning authority cannot demonstrate a five-year supply of housing land and so paragraph 11d of the NPPF is engaged. The proposal would not harm areas or assets of particular importance and so this would not provide a clear reason for refusing the development. Therefore, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
24. The proposed development would contribute to achieving the NPPF aims of significantly boosting the supply of housing and meeting the housing needs of differing groups. However, the NPPF requires that this is achieved in a manner that ensures new development adds to the overall quality of an area. Trees are recognised as making an important contribution to the character and quality of urban environments and the NPPF requires their retention wherever possible. In this case, the proposal has not demonstrated that a protected tree with visual amenity value would be retained. It has not been demonstrated that the same or similar benefits could not be achieved, whilst retaining trees that contribute visually to the character and quality of the area. Paragraph 134 of the NPPF advises that developed that is not well designed should be refused.
25. Therefore, when the proposal is assessed against the policies in the NPPF taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits. The proposal would not therefore benefit from the presumption in favour of sustainable development.

Conclusion

26. The proposed development would conflict with the development plan, taken as a whole, and there are no material considerations, including the NPPF, worthy of sufficient weight, that would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

S Brook

INSPECTOR