



Appeal Decision

Site visit made on 26 July 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st February 2024

Appeal Ref: APP/Q0505/W/22/3311017

249 Newmarket Road, Cambridge, Cambridgeshire CB5 8JE

- 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 Toby Churchill against the decision of Cambridge City Council.
 - The application Ref 22/01442/FUL, dated 19 March 2022, was refused by notice dated 17 May 2022.
 - The development proposed is erection of 2no flats with associated works and landscaping.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 21 August 2023.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposed development upon the character and appearance of the area;
 - The effect of the proposal upon the setting of Grade II listed 247 Newmarket Road;
 - Whether the proposal would provide adequate living conditions for future occupiers with regard to providing a safe and secure living environment, internal space, sunlight and noise;
 - The effect of the proposed development upon the living conditions of existing nearby occupiers with regard to outlook, daylight and sunlight;
 - Whether the proposal would provide adequate bin storage and cycle storage; and
 - Whether the proposal would impact upon biodiversity with regard to biodiversity net gain.

Reasons

Character and appearance

3. The appeal site comprises a vacant and overgrown parcel of land located to the rear of Grade II listed dwelling 247 Newmarket Road. The site is accessed

through the undercroft and car park of 249 – 251 Newmarket Road which comprises a bar/restaurant and a number of apartments.

4. Newmarket Road is a busy thoroughfare through the local area and appears to have undergone some regeneration through the development of large scale modern residential and commercial schemes. Despite these developments more historic and traditional linear development with a smaller scale extends along the road resulting in a degree of variation and a juxtaposition between older and newer development. The area behind the site has a tighter residential urban grain with the rear gardens of properties along Rowlinson Way backing on to the site.
5. The proposed development would be sited behind buildings fronting Newmarket Road formed of a two-storey flat roof building accommodating two apartments with a garden area sited to the north. It would be orientated so that it would front on to the car park. Whilst the proposal seeks to replicate nearby contemporary architecture it would be somewhat surprising to find dwellings in this location and with no connection to the road.
6. Its position would be at odds with the established road frontage pattern of development in the area and would result in an awkward spatial relationship with neighbouring properties including No 247 and properties in Rowlinson Way. The overall mass of the building would result in an uncharacteristic concentration of built form and combined with its spatial relationship with nearby properties and lack of physical connection with Newmarket Road would lead to a development that would fail to successfully integrate into the area.
7. As such, the proposal would adversely affect the character and appearance of the area contrary to Policies 23, 55, 56, 57 and 59 of the Cambridge Local Plan (2018) (LP) which, amongst other things, seek high quality new buildings; development to respond positively to its context and create distinctive and high-quality places and the successful integration of buildings with its locality.

Impact upon a designated heritage asset

8. 247 Newmarket Road is a two and a half storey early nineteenth century dwelling with a Dutch barn style roof. It is a remnant of the former buildings that once fronted Newmarket Road. Its significance is informed by its architectural and historic interest as a building dating back several centuries. From the evidence before me the appeal site once formed part of its rear garden.
9. I acknowledge that No 247 sits within a tight urban setting. However, the mass and position of the proposed development would erode the limited degree of openness that currently exists to the rear of it, and which contributes to its setting. I, therefore, conclude that the proposed development would fail to preserve the setting of No 247 causing less than substantial harm to its significance.
10. In accordance with Paragraph 202 of the National Planning Policy Framework (the Framework), it is for the decision maker, having identified harm to designated assets, to consider the scale of that harm. This harm should be weighed against the public benefits of the proposal including, where, appropriate, securing its optimum viable use, which I now turn to.

11. The proposal would provide two apartments contributing to housing locally and future residents would contribute towards maintaining services and facilities, however the benefits would be modest given the scale of the development.
12. Heritage assets are an irreplaceable resource and taking into consideration the points above I am not satisfied that the public benefits are sufficient to outweigh the less than substantial harm that would occur to the setting of No 247.
13. As such, the proposal would fail to preserve or enhance the significance of a designated heritage asset contrary to LP Policy 61 which, amongst other things, seeks to preserve or enhance the significance of heritage assets in the city including their setting.

Living conditions for future occupiers

14. The Council has raised concerns that it has not been demonstrated that the proposed development would meet Building Regulations requirement M4(2) for accessible and adaptable dwellings. LP Policy 51 requires developments to meet this requirement, however, the Planning Practice Guidance states that local planning authorities should not impose additional information requirements or seek to determine compliance with Requirement M4(2). This is the role of the Building Control Body. Furthermore, the supporting text to LP Policy 51 states that dwellings will be controlled through the use of a planning condition to ensure that the relevant homes are delivered to meet the standards.
15. In this context, whilst the appellant has not demonstrated how the proposed dwellings would achieve compliance with M4(2), it would be unreasonable to require such details in order to achieve compliance with LP Policy 51. I am satisfied that this matter could be secured through the imposition of a planning condition. Accordingly, the development would be capable of providing suitably accessible accommodation in accordance with LP Policy 51.
16. There is disagreement between the parties regarding the internal floor area of the flats and whether they accord with the Nationally Described Space Standards (NDSS). The NDSS states that the Gross Internal Area (GIA) of a dwelling is defined as the total floor space measured between the internal faces of perimeter walls that enclose the dwelling. It goes on to advise that this includes partitions, structural elements, cupboards, ducts, flights of stairs and voids above stairs.
17. Whilst I note the Council's comments there is nothing in the wording of the NDSS which states that only habitable space counts towards the GIA of a dwelling. In fact, it is evident that non habitable spaces including bathrooms, cupboards and stairs all count towards the GIA figure.
18. As such, there is no credible evidence before me to dispute the appellant's case that the flats accord with the standards. I conclude that the proposed development in terms of its internal size would provide satisfactory living conditions for future occupants.
19. The proposed flats would be accessed through the undercroft and car park. Despite the intention to provide a pedestrian route from the road to the front door this arrangement would be somewhat inconvenient. There would be the potential for conflict between pedestrians and vehicles when taking into

- consideration the limited width of the drive leading to the car park. As such, the proposed pedestrian route would not be suitable for future occupiers resulting in an uninviting environment that would also be unsafe.
20. The appellant has submitted a Noise Impact Assessment, however, the Council are critical of its contents particularly in respect of the relationship with the beer garden associated with the Corner House Public House.
 21. I acknowledge that there are other noise sources in the area. However, the Corner House is open late into the evening and the beer garden is sizable accommodating a good number of seats and tables. It attracts customers during the day and evening. In particular, during the evening there would be many comings and goings, the sound of people having conversations or shouting when future occupants would reasonably expect to enjoy the comfort of their own surroundings.
 22. These activities would be intermittent and the uncertain and arbitrary nature of them is likely to be more noticeable having an unacceptable impact on the living conditions of future occupants in terms of noise.
 23. Whilst the Appellant contends that noise generated by patrons of the Corner House is not significant this evidence is essentially anecdotal. I therefore give it limited weight in coming to my decision.
 24. As such, I am not satisfied that this matter has been properly investigated to demonstrate that the proposed development would provide satisfactory living conditions in respect of noise, despite the intention to provide noise mitigation.
 25. The proposed garden area would be positioned between the building and the rear boundary fences of properties in Rowlinson Way. I find that the garden area would be unduly overshadowed, enclosed and an oppressive environment for future occupiers, when taking into account the position and height of the proposed development and the proximity of the boundary fences. In my view, the garden could not be reasonably enjoyed and would diminish the living conditions of future occupiers.
 26. Drawing all of the above together the proposed development would not provide satisfactory living conditions for future occupiers contrary to LP Policies 35, 56 and 57 which, amongst other things, require developments to demonstrate that adverse noise effects can be minimised or mitigated; provide a comprehensive design approach that achieves the successful integration of buildings, routes and spaces between buildings, landscape and that are convenient, safe and accessible for all users.

Living conditions of existing occupiers

27. It is evident that the existing balconies at the rear of 251 Newmarket Road have been designed in such a manner that permits mutual overlooking between the individual apartments and properties in the area. For this reason and despite the introduction of windows facing the balconies the proposal would not lead to a materially harmful impact on the living conditions of existing occupiers when using their balconies.
28. The appellant has produced a daylight/sunlight impact assessment which shows that the resultant overshadowing of the garden of 17 Rowlinson Way would be minimal. Whilst it is somewhat of a crude assessment there is nothing before

me to lead me to reach a different conclusion. As such, based on the evidence before me, any impediment of sunlight would be minimal and would not substantially reduce the amount of natural sunlight reaching the rear garden of No 17.

29. Despite the above, the height and position of the proposed windows in the side elevations in close proximity to the boundaries with 16 and 17 Rowlinson Way and 247 Newmarket Road would result in actual and perceived overlooking of their gardens. This would lead to an unacceptable loss of privacy for the occupiers of these dwellings adversely affecting enjoyment of their properties and gardens.
30. Whilst it has been suggested that the windows could be fitted with obscure glazing, it is my view that this would result in an unduly oppressive internal environment for future occupiers with limited outlook.
31. The overall mass of the building and its position in very close proximity to neighbouring properties along Rowlinson Way and No 247 would be visually intrusive and would severely diminish the living conditions of existing occupiers in terms of outlook. The proximity of the development to the boundaries would result in a sense of enclosure and therefore have a significant overbearing effect on the occupiers of these properties and their rear gardens. The position of the proposed development and its close spatial relationship with neighbouring properties would result in an oppressive environment for existing occupiers with limited privacy or relief from the built form.
32. As such, I conclude that the proposed development would cause significant harm to the living conditions of the occupiers of neighbouring properties with regard to overlooking, outlook and loss of light. As such, the proposed development would be contrary to LP Policies 55, 56, and 57 which, amongst other things require developments to respond positively to its context; to be attractive, high quality, accessible, inclusive and safe having a positive impact on their setting. It would also be contrary to paragraph 130 f) of the Framework which, amongst other things, seeks to ensure that development promotes a high standard of amenity for existing and future users.

Bin and bicycle storage

33. The Council raise concerns regarding the proposed facilities for bins and cycle storage. I observed at the site visit that covered cycle storage is located within the car park and the appellant has indicated that adequate provision for both bins and cycles could be provided within the car park in one of two locations.
34. I acknowledge that the details of cycle parking and refuse storage has not been provided. However, I am satisfied that relevant conditions could be imposed if I were minded to allow the appeal.
35. As such, there would be no conflict with LP Policies 57 and 82 which, amongst other things, require developments to provide adequate cycle parking levels and successfully integrate functional needs such as refuse and recycling, bicycles and car parking.

Biodiversity

36. In respect of the impact upon biodiversity the Council have referred to LP Policies 69 and 70, which relate to sites of biodiversity and geodiversity

importance and the protection of priority species and habitats. There is no substantive evidence that the site forms any such habitat or is home to any protected species. Indeed, the Council acknowledge that the appeal site has very little biodiversity value.

37. Whilst no substantive information has been provided by the appellant in respect of establishing a biodiversity baseline and details of how biodiversity net gain (BCN) could be achieved, given the modest size of the site and its urban context I am of the view that an appropriately worded condition to secure a BCN of at least 10% could be imposed if I were minded to allow the appeal. In this respect there would be no conflict with LP Policies 69 and 70.

Other Matters

38. Whilst the proposed development would redevelop a brownfield site, and which is within walking distance of a number of services and facilities this would not overcome the harm that I have identified in relation to the main matters. The condition of the site is not justification to allow a development that I have found to be harmful.
39. The appellant has made reference to a number of developments in the area which they suggest are relevant to this appeal. However, based on the information before me they are of a materially different scale compared to the appeal site. In any case, every appeal must be considered on its own merits. The presence of other developments in the area does not justify the harm that I have identified.
40. I note the intention for the development to be "car-free". However, in the absence of a planning obligation securing the development as such I give this very limited weight in coming to my decision.

Conclusion

41. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR