



Appeal Decision

Site visit made on 23 January 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/Q3060/W/23/3327164

Land adjacent to Highbury Road behind Cantrell Road bus stop, between 330 Highbury Road (Highfield Care Home) and 272 Highbury Road as shown on drawing 2446/01 the OS location plan (easting 454239, northing 344816)

- 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 Soni on behalf of K S Group Holdings Ltd against the decision of Nottingham City Council.
 - The application Ref 23/00849/PFUL3, dated 12 May 2023, was refused by notice dated 10 July 2023.
 - The development proposed is demolition of the southern advertisement hoarding, the paved area and the raised planting beds on site, and the erection of 2 no. 4 bed bungalows and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address shown in the banner heading above is taken from the 'description of the site location' on the application form and includes the easting and northing for clarity. The Council described the site as "North of 272 Highbury Road, Nottingham". However, I consider that the above address better describes the location of the appeal site.
3. A revised National Planning Policy Framework (the Framework) came into force on the 19 December 2023 with a further change published on 20 December. The revised Framework is a material consideration which should be taken into account from the day of publication. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

Main Issues

4. The main issues are:
 - whether the proposed development would preserve or enhance the character or appearance of the area, including the Bulwell Conservation Area; and
 - the effect of the proposed development on biodiversity.

Reasons

Character and appearance

5. The appeal site lies within the Bulwell Conservation Area. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ('the Act') provides, at section 72(1), that with respect to any buildings or other land, in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character, or appearance of that area.
6. From the evidence before me, the appeal site lies within the Highbury Road and Station Road area of the Bulwell Conservation Area, where the Bulwell Stone Church tower and churchyard of St Mary's act as key focal points. The appellant's Heritage Impact Assessment also advises that the site has historic importance as a sand pit for the development of the surrounding area and was left undeveloped due to its steep sloping nature.
7. From what I saw on my visit to the area, as far as it is relevant to the appeal, I consider that the significance of the conservation area, as a whole, is mainly derived from its historic street layout and the range of buildings' ages and sizes. The stone boundary and retaining walls and mature trees are a particular noticeable characteristic of this area which contribute positively to the Conservation Area. However, the significance of the area around the appeal site is also derived from the mix of Victorian terraced houses, semi-detached villas and detached houses which contribute positively to the character and appearance of the area.
8. I acknowledge that the appeal site is an overgrown piece of land which currently contains two large advertising hoardings, which at the time of my visit were both out of use, and trees on, and adjacent to, the boundaries with the neighbouring properties. The site is open to the roadside on Highbury Road with a bus stop and shelter on the pavement immediately outside the site. The overgrown nature and advertising hoardings currently detract from the character and appearance of the Conservation Area and the appellant asserts that the site also attracts unwelcome attention and anti-social behaviour.
9. However, the green space and the trees also make a positive contribution to the character and appearance of the Conservation Area. The appeal site forms the southern tip of the Conservation Area, nonetheless it is part of the Conservation Area. Along with the open space opposite, and other trees within the street scene, the appeal site provides a green gateway at the entrance to the Conservation Area. Beyond this site the area is densely developed and open pieces of land, such as the appeal site, are valuable as a green break in the built development.
10. The site is within a residential area with other uses, including the care home behind and the shops adjacent. The care home is a large, detached building with a single storey extension. Other housing in the immediate area is tight knit terracing, both traditional and more recent developments, and larger semi and detached two-storey houses which are built close together on their plots. All of the housing in the immediate area faces the roads and have private gardens to the rear. In my judgement the area is predominately residential rather than mixed use.

11. The proposal is for two dormer bungalows which would be finished in materials which would relate well to the surrounding palette. However, the footprint of the dwellings would almost fill the depth of the plots and the design and layout would not have obvious fronts facing the road.
12. The proposal would not reflect the urban grain of the terrace houses on Henrietta Street and Bannerman Road which are two to three-storey with narrow frontages and deep plots. Neither would it reflect the detached and semi-detached houses closer to town which have wider frontages but still face the road and with a regular rhythm to their layout.
13. The development would not easily assimilate with the area or soften the change between the existing tight knit terraces and larger houses as the appellant asserts. In my judgement, the proposal would be incongruous additions out of keeping with the character and appearance of the area and would not reflect the layout, design, character, or appearance of the other housing within the immediate area.
14. That the design and detailing reflect listed buildings within the town centre would not justify the proposal in an area where the design and form of development is of a different character and in a different context. Moreover, the two other single storey buildings referred to in the appellant's Design and Access Statement are not within the same context as the appeal site and do not appear to be separate dwellings. As such these two buildings do not justify the proposed development.
15. Some of the trees would be retained. However, although views of the trees and the care home would still be available, the eye would be drawn to the proposed dwellings due to their significant difference in scale, massing, position, and design when compared to the surrounding built development. Albeit low lying, the proposal would, therefore, not preserve or enhance the character of the area or the Conservation Area.
16. I accept that the site is not formally defined as amenity green space, park, or garden and, as such, there is no loss of usable open space. Although access may not be formally available, the land is currently open and can be appreciated as open green space by the public. The part of the appeal site, retained as undeveloped, would not be defined as separate from the garden of plot one and would, therefore, not provide the same open visual amenity as the existing land, albeit that it would provide some visual amenity from being garden land. The proposed development of the site would result in substantial reduction in the visual amenity green space on this side of Highbury Road which would be harmful to the character and appearance of the Conservation Area.
17. For the reasons given above, I find that the proposal fails to preserve or enhance the character or appearance of the area, including the Bulwell Conservation Area. I have had regard to the Act, as detailed above. The proposal is, therefore, contrary to Policies 10 and 11 of the Greater Nottingham, Broxtowe Borough, Gedling Borough, Nottingham City, Aligned Core Strategies Part 1 Local Plan, adopted September 2014 (ACS) which, taken together, seek to ensure that all development is designed to make a positive contribution to the public realm and sense of place, to reinforce valued local characteristics and local context, taking into account grain, street patterns, plots sizes, orientation, position of buildings, density, massing, scale and

proportions, amongst other matters. The same policies also require development to be designed in a way that conserves or enhances heritage assets and the historic environment.

18. For the same reasons the proposal would also be contrary to Policies DE1 and HE1 of the Nottingham City Land and Planning Policies Development Plan Document, Local Plan Part 2, January 2020 (LAPP) which, taken together, seek to ensure that development respects and enhances the streetscape, townscape and character of the area and also requires developments to conserve or enhance the historic environment. Policy HE1 also requires proposals affecting heritage assets to consider character, urban grain, scale, building form, massing, street pattern and views, amongst other matters, which the appeal proposal would fail to do.

Biodiversity

19. The appeal site is currently overgrown and includes trees protected by a Tree Preservation Order (TPO). The main parties agree that the TPO would not be adversely affected. However, the construction of two dwellings on the site would require the removal of a substantial area of existing vegetation and the loss of undeveloped land. Moreover, the sloping nature of the site would also require groundworks to be carried out.
20. Both main parties agree that the site offers biodiversity value. However, no evidence, such as a Preliminary Ecology Survey, has been provided to fully understand the potential effect on biodiversity or to support the appellant's claim that the development would only result in a small loss in biodiversity. Given the presence of vegetation and trees both within and around the site, I consider that there is a likelihood of protected species being present in the locality. That the site currently suffers from anti-social behaviour does not reduce the need to consider the likely effect on biodiversity.
21. Circular 06/2005¹ states that "it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision". Ecological mitigation should only be employed where it is not possible to avoid the impact. Furthermore, mitigation measures should be specific to an identified harm. Without fully understanding the baseline ecological potential of the site it is not possible to know whether there is an impact on biodiversity, whether there is an opportunity to avoid the impact, or what mitigation could be used.
22. The appellant has suggested that mitigation could be secured, either within the site or off-site, to compensate for any loss of biodiversity. The finer details of the mitigation strategy and landscaping could be secured by condition, once the baseline and presence, or otherwise, of protected species has been established. It is not appropriate to condition the requirements for a survey to establish the baseline.
23. Given the advice in Circular 06/2005, without an ecological assessment I cannot be certain that any harmful effects arising from the proposal could be

¹ ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

adequately avoided or mitigated or that the landscaping proposed would encourage more wildlife.

24. In the absence of this detailed information the proposal would be likely to adversely affect biodiversity contrary to the requirement of Policy 17 of the ACS and Policy EN6 of the LAPP which, taken together, seek to increase, protect, and promote biodiversity.

Other Matters

25. The scheme has been reduced in comparison to the scheme proposed at the pre-application stage. However, I must assess the proposal on its own merits, not as a comparative exercise with a different scheme.

Planning Balance

26. The harm to the Conservation Area from the development would be less than substantial. Paragraph 208 of the Framework advises that such harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
27. The provision of two new dwellings would have economic and social benefits; be built to high environmental standards; would contribute towards boosting housing supply; would provide accommodation with ground floor bedrooms and, therefore, provide accessible housing, all in accordance with the Framework. Furthermore, the proposal would be within a location served by public transport and near to services and facilities and would make use of an under-utilised piece of land. I also acknowledge that Policy 8 of the ACS and Policy H01 of the LAPP both support the principle of family housing outside of the City Centre on sites capable of accommodating family housing.
28. However, as a proposal for two dwellings the development would only provide a modest public benefit in these regards and these factors, therefore, weigh moderately in favour of the proposal.
29. The provision of parking spaces, including electric charging points, private outdoor space, space for waste storage and soakaways for drainage of surface water as part of the development are all neutral matters and weigh neither for nor against the proposal. Moreover, I am also not convinced that the proposed development is the only means of securing the removal of the advertising hoardings from the site or providing better ongoing maintenance of the site to reduce any anti-social behaviour issues.
30. The public benefits that I have outlined above would not outweigh the harm I have found to the character and appearance of the area, including the Bulwell Conservation Area, on which I place great weight in accordance with Paragraph 205 of the Framework. I also have no compelling evidence that the development as proposed would secure its optimum viable use.
31. Overall, the harm that I have identified to the character and appearance of the area, including the Bulwell Conservation Area, and the and environmental harm from the loss of biodiversity, would outweigh the benefits of the proposal. The proposed development, therefore, fails to comply with the Development Plan, when considered as a whole, and there are no material considerations that indicate I should make a decision otherwise.

Conclusion

32. For the reasons given above I conclude that the appeal should be dismissed.

K Townsend

INSPECTOR