



Appeal Decisions

Site visit made on 17 October 2023

by **C Dillon BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26th Mrch 2024

Appeal A Ref: APP/P1045/W/23/3317803

38-40 St. John Street, Ashbourne, Derbyshire DE6 1GH

- 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 Matheos Matheou on behalf of M & P Properties against the decision of Derbyshire Dales District Council.
 - The application Ref is 22/00212/FUL.
 - The development proposed is described as "erection in rear yard of 2 no retail units (Use Class E -Commercial) with 2 no apartments above, with associated landscaping works, and works to boundary walls".
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Appeal B Ref: APP/P1045/Y/23/3317802

38-40 St. John's Street, Ashbourne, Derbyshire DE6 1GH

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Matheos Matheou on behalf of M & P Properties against the decision of Derbyshire Dales District Council.
 - The application Ref is 22/00213/LBALT.
 - The works proposed are described as "works to boundary walls".
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Decision

1. Appeal A and Appeal B are both dismissed.

Preliminary Matters

2. The appeal site is land to the rear of, and historically associated with, 'Nos 38-40 St. John's Street', a Grade II listed building. Alongside Nos 38-40, the appeal site falls within the setting of other Grade II listed buildings falling within the grouping of Nos 2 and 6-44 St. John's Street (even numbers). Furthermore, the 'Ashbourne Conservation Area' covers both the appeal site and its setting.
3. The proposed works relate to the same scheme although owing to the different legal regimes there are differences in the scope of the planning appeal (Appeal A) and the listed building consent appeal (Appeal B). The scope of Appeal A includes a proposed retail unit and living accommodation above, works to the boundary enclosure and associated hard surfacing. Appeal B relates to works to the site's boundary enclosure. An amendment to the description of development for Appeal B has been agreed between the main parties to clarify its scope and is reflected in the heading above. From the submitted evidence and my site observations, I am satisfied that the site's surviving brick rear boundary walls are covered by the same statutory protection as the associated listed building. As the proposed building would form part of the enclosure of the site, it falls within the scope of Appeal B insofar as it relates to boundary treatment. Nonetheless, to avoid repetition I have dealt with both appeals

within a single decision letter. In making my decision, I have borne in mind my statutory duties in respect of sections 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

4. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. Although I have made my determination against that updated national policy context, the relevant changes relate to formatting and do not raise any new matters which are determinative to the outcome of this appeal.

Main Issues

5. The most significant factor in this appeal relates to the siting, scale and design of the proposed scheme. In this context, the main issues are:
 - whether or not the proposals would preserve the setting and features of special architectural or historic interest of the host site, Nos 38-40 St. John's Street, and the remaining buildings within the Grade II listed grouping comprising Nos 2 and 6-44 St. John's Street (evens); and
 - whether or not the proposals would preserve or enhance the character or appearance of the Ashbourne Conservation Area.

Reasons

Special interests and setting of Listed Buildings

6. The appeal site forms part of the immediate setting of Nos 38-40 St. John's Street. The special architectural or historic interest features of this generous, mid-terraced listed building are derived from its value as an example of a late 18th century townhouse, with evidence of an earlier, possibly timber framed, building. Its historic interest is derived, amongst other things, from its mixed use role and development as a local drapery, furnishing warehouse and associated living accommodation within one of a series of cohesive burgage plots which link to the early development of Ashbourne.
7. From the submitted evidence and my site visit observations, it is evident that this listed building's wider setting has changed over time, including by the laying of a modern carpark and commercial development beyond. Nonetheless, the land to which the appeals relate, and its wider historic commercial market town setting, remain integral to the appreciation of this building's historic interest. It remains an important focal point at the bottom of the Market Place.
8. In particular, the remaining historic fabric of this townscape setting and the surviving burgage plot layout of St. John's Street feature heavily in the uninterrupted linear views of Nos 38-40 and the appeal site from across the car park. These exposed views are framed by the prevailing traditional built fabric of the remainder of this section of St. John's Street. This setting enables the continued appreciation of the important role that Nos 38-40 and its adjacent listed buildings have played through the ages as a mixed-use within the historic commercial heart of this town.
9. The surviving sections of brick walling help define the limits of the burgage plot without distracting from its otherwise open, undeveloped state. By virtue of their positioning, materials and age, they form part of the important historic fabric of Nos 38-40 and contribute to the building's special features of

architectural and historic interest. The current height of the boundary walls permits historic views to and from the rear of this listed property.

10. The proposed scheme would result in the erection of a two storey building to accommodate two retail units with two flats above. Its linear footprint would occupy almost half of the burgage plot's width and extend from its rear most boundary, back towards Nos 38-40. In doing so, it would enclose a significant length of the party boundary with No 42. The remainder of this roughly surfaced and overgrown enclosed area would be laid to car parking and a shared surface for pedestrian and motorist access. The submitted plans also show how the appeal site's historic boundary treatment would be repaired, extended and where structurally necessary or missing, be reinstated. New timber gates would be installed at the site's existing rear access point.
11. The proposed building would generally reflect the surrounding historic built fabric in terms of its form, architectural features and materials. Nonetheless, it would represent the introduction of significant built development within the historic burgage plot. The enclosure of much of the party boundary with No 42 would be at a significantly greater height than its existing means of enclosure. This proposed change would severely interrupt the current exposed views of the rear elevation of Nos 38-40. In doing so, the appreciation of this listed building's special architectural features and the understanding of its historic use, including the undeveloped burgage plot layout, would be severely impeded by the proposed building.
12. The appellant has argued that the existence of former outbuildings within the plot cannot be ruled out. However, the evidence is inconclusive on this matter. My attention has also been drawn to examples of other similar developments set within other burgage plots in the locality. Furthermore, the appellant has drawn attention to the building's internal layout and existing use to assert there is no evidence of a closely connected designed relationship.
13. The proposals would not harm the architectural interests of Nos 38-40. However, it remains that the historic connection between the appeal site and Nos 38-40 can still be discerned. There is no doubt that the proposed development would cause substantial change to the existing building's setting and erode that link. The erection of the proposed building within this undeveloped historic burgage plot would adversely affect the setting of listed Nos 38-40. This would be harmful to its historic interest.
14. The proposed works to the walling to be repaired or reinstated along the remaining sections of the site boundary would be carried out using matching materials and to a similar height and would preserve the historic burgage plot layout. I am satisfied that a suitably worded condition requiring agreement of a sample panel of materials, pointing and coping finish could be imposed to avoid any harm. While I acknowledge the proposed reinstatement of the walls and the proposed ground surfacing would not be harmful and have not raised objection from the Council, these works would do little to outweigh the identified harm to the listed building's setting.
15. In having special regard to the desirability of preserving this listed building and its setting, and any features of special architectural or historic interest which it possesses, I find that the proposed works to repair, rebuild and reinstate some of this burgage plot's boundary treatment would preserve and also enhance the fabric of this listed building and its setting. This would accord with the Act.

However, the erection of the proposed building would fail to preserve its setting and, in doing so, would detract from the special historic interest of Nos 38-40 St. John's Street. This would be harmful and would not accord with the Act. In terms of the Framework, this would amount to less than substantial harm.

16. In view of the close relationship of this historic burgage plot layout with the remaining Grade II listed buildings comprising Nos 2 and 6-44 St. John's Street (evens), the proposed building would also harm the setting of those designated heritage assets. However, it serves no favourable purpose to the appellant in me making any further individual assessments of the effect of this change on their special architectural or historic interests.
17. In line with the Framework any harm to, or loss of significance of a designated heritage asset from its alteration or destruction, or from development within its setting should require clear and convincing justification. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, and I address this later.

Character and appearance of Conservation Area

18. The appeal site's architecture and fabric, along with its burgage plot layout, contribute positively to the historic and architectural significance of the Ashbourne Conservation Area. The Council's Conservation Area Appraisal states that as a historical and archaeological resource, the burgage plots of Ashbourne should be regarded as a finite heritage asset that should be afforded protection and recognition whenever proposals may potentially erode, remove or diminish their presence.
19. I am satisfied that conditions could be necessarily imposed to manage the appearance of the proposed hard surface treatment and works to the boundary walls and gates. Nonetheless, the proposed building would significantly impinge on the appreciation of the exposed character and appearance of the rear elevations of Nos 38-40 and also the run of the remaining neighbouring burgage plots to the rear of Nos 2, and 6-44 (evens) St. John's Street, which contribute to the exposed edge of this part of the Conservation Area. This change would adversely affect views into the Conservation Area from nearby and medium range vantage points within and across the neighbouring carpark and from Park Road beyond. This adverse outcome could not be satisfactorily resolved through the use of any planning conditions. Overall, this effect would neither preserve or enhance the character or appearance of the Ashbourne Conservation Area but would harm it. This would not meet the provisions of the Act.
20. In terms of the Framework, this effect would amount to less than substantial harm. This harm should also be weighed against the public benefits of the proposal. I afford considerable importance and weight to this harm and address whether it is justified below.

Heritage Balance

21. In the context of paragraphs 206 and 208 of the Framework, the appellant has drawn my attention to a number of public benefits of the proposed scheme. I accept that it would provide some physical improvements to the fabric of the appeal site which would be experienced from surrounding public vantage

points. However, it is a responsibility of any owner to maintain their listed building. Furthermore, it has not been clearly demonstrated that this will influence a more comprehensive regeneration of the town centre. As such, this regeneration benefit carries moderate weight.

22. The proposed scheme would make a small contribution to the undisputed current shortfall in the area's 5 year Housing Land Supply position which carries significant favourable weight. The proposed scheme would intensify the use of the site and represent the effective use of land which carries moderate favourable weight. The appeal site's central location next to a public car park and other commercial uses already facilitates opportunities for linked trips. As such, the submitted evidence does not substantiate why a benefit other than one which attracts moderate weight would arise in that regard.
23. I afford considerable importance and weight to the identified harms to the Conservation Area and to the listed building 'Nos 38-40 St. John's Street'. In doing so, I find that the public benefits of the proposed scheme, including the contribution that would be made to the area's housing land supply, would not outweigh the harms that would arise to those important designated heritage assets, when assessed either individually or collectively.

Planning Balance

24. Overall, I find that by virtue of its siting and scale, the proposed scheme would harm Nos 38-40 St. John's Street because it would not preserve its setting which is a fundamental part of the understanding of its development and function. Furthermore, it would not preserve or enhance the character or appearance of the Ashbourne Conservation Area but would harm it. There are no compelling public benefits which would outweigh either of those harms. Policy PD2 of the Local Plan states that heritage assets will be conserved in a manner appropriate to their significance. It sets out the means by which the proposed design should be holistic, sympathetic and minimise harm to the asset. This policy is consistent with the Framework's approach to the historic environment. In view of the identified heritage harms, the proposed scheme would conflict with this local plan policy.
25. In view of the nature and scale of the Local Plan policy conflict, I find that the proposed new building would, despite the identified benefits, conflict with the development plan when taken as a whole, as well as with the Framework. Although some benefits would arise from repair works to the boundary wall, having regard to the scheme as a whole and the harm which would be caused, these would not outweigh the conflict with the development plan.

Conclusion

26. For the reasons set above and having had regard to all matters raised, I conclude that both Appeal A and Appeal B should be dismissed.

C Dillon

INSPECTOR