



Appeal Decision

Site visit made on 13 March 2024

by D Cleary MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11.04.2024

Appeal Ref: APP/E3715/D/24/3337670

7 Newbold Road, Rugby, Warwickshire CV21 2LQ

- 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 C Hinde against the decision of Rugby Borough Council.
 - The application Ref: R23/0902, dated 4 September 2023, was refused by notice dated 6 November 2023.
 - The development proposed is described as a new vehicular highway access with dropped kerb and gated drive to house. This is to allow disabled vehicles to enter the site and park.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In response to reasons for refusal 1 and 4, which relate to trees, the appeal has been supported by an Arboricultural Report¹ (the AR). This is new information not previously seen by the Council. As a householder appeal, the Council are deprived of the opportunity to comment on matters raised. I have therefore invited, and received, comments from the Council on the content of the AR. In response to those comments made by the Council, additional comments have been received from the appellant. I have had regard to all comments received in reaching my decision.
3. Since the decision was made by the Council, a revised version of the National Planning Policy Framework (the Framework) was published (19 December 2023). This does not materially change the planning policy context in respect of the main issue.

Main Issues

4. The main issues are the effect of the development on: the character and appearance of the area; the setting of a Listed Building (The Lawn); protected trees; and, highway safety.

Reasons

Character and Appearance (and setting of The Lawn)

5. The appeal dwelling is a large detached dwelling which is located close to Rugby town centre. The site lies on Newbold Road, which is a classified road, and

¹ Apex Environmental – Arboricultural Report BS5837:2012, dated 08/12/2023

one of the main arterial routes into Rugby. The surrounding area includes a mix of land uses and buildings of varying scale, form and character. The front garden of the appeal site is well vegetated and includes a number of mature trees, some of which are covered by TPO². Brick walls define the front and side boundaries of the appeal site. On this side of Newbold Road, low level front boundary walls, positioned at the back of the pavement, continue towards Oliver Street. Together, the walls create a strong visual edge along this part of Newbold Road.

6. The appeal site lies close to a Grade II listed building, known as The Lawn. Newbold Road, various buildings, hard surfaced areas, and soft landscaping, separate the appeal site from The Lawn. The appeal site can be considered to fall within its wider setting. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA Act) requires me to have special regard to the desirability of preserving listed buildings, or their setting, or any feature of special architectural or historic interest which they possess.
7. The proposed access would result in the removal of part of the front boundary wall. This would be positioned close to the adjacent vehicular access, and would be separated by the retained pedestrian access to the appeal site only. The close proximity of the vehicular accesses would cumulatively result in a wide visual break in the wall. This would disrupt the rhythm and continuity of the hardedge boundary fronting Newbold Road on this close approach to the town centre. The retained pedestrian access would appear as an isolated narrow front boundary flanked by the two wider vehicular accesses. Given its narrow width, this would appear visually at odds with the longer lengths of wall either side of the vehicular accesses. The proposed removal of the wall would therefore have a harmful effect on the overall character and appearance of the street.
8. With regard to the effect on the setting of The Lawn, the intervening development and separation distance means that there is limited intervisibility between the appeal site and the listed building. Furthermore, Newbold Road, with its high traffic flow, acts as a visual buffer which dissects the visual relationship. Given this context, and the limited scale of the proposal, the development would not inadvertently draw attention away from the listed building in a manner which would be harmful to its setting.
9. Therefore, while I have found that the removal of the wall has a negative effect on the character and appearance of the area, more generally, I do not consider that the development would be harmful to the setting of The Lawn.
10. For the above reasons development would have a negative effect on the character and appearance of the area. The proposals would conflict with Policy SDC1 of the Rugby Borough Council Local Plan 2019 (the LP) and guidance contained within the Framework. These, amongst other things, require development to achieve high quality, inclusive and sustainable design, which responds to character of the area. However, I find no conflict with this Policy with regard the effect of the development on the setting of The Lawn.

² Tree Preservation Order No.237 – 3-7 Newbold Road, Rugby

Trees

11. A horse chestnut tree, covered by the TPO, is located to the front of the property (hereafter referred to as T1). T1 is large and prominent, and I consider it to have significant visual value. Development which would compromise its retention now, or in the future, could have a negative effect on the overall character and appearance of the area.
12. There is some dispute between the parties over the extent of the root protection area (RPA) for T1, and consequently the level of incursion that would arise from the development. The AR provides a nominal RPA to take account of the urban context and site characteristics. This considers that the root system is likely to be affected by the roadside boundary wall and the appeal dwelling. The suggested RPA therefore spreads into the land to the north and south of the appeal site. The side boundaries of the appeal site include brick walls although I am unclear whether the foundations of these would have affected the root system and, therefore, the extent of the suggested RPA. Furthermore, much of the land to the south of the appeal site is covered by hard surfaced areas, while there are also areas of existing hard surfacing within the site.
13. The AR suggests that the proposals would result in a 14% incursion into the RPA. However, I have been provided with no clear calculations on how much of the land within the nominal RPA is surfaced and the extent of land which remains unsurfaced. The scheme includes the surfacing of a large area of the garden for parking and turning. These works would cover much of the existing garden area. The AR indicates that this would be carried out using no-dig construction techniques. While such techniques can be used in certain circumstances, in this instance, there is too much uncertainty over the extent of the RPA and the proportions which remain unsurfaced. Therefore, I cannot definitively conclude on the extent of incursion into the RPA and whether this would be within acceptable tolerances³.
14. The land level behind the front boundary wall, around T1, is higher than the public highway. From my observations on site, this change in levels is not insignificant. The access and driveway would all fall within the RPA of T1 and, if excavation is required, has the potential to affect the root system. I also note that the driveway would also be flanked by walls and pillars which may require foundations. The AR indicates that these works would be carried out under arboricultural supervision, although there is little specific detail of what works would actually be carried out in this area. Crucially, I have not been provided with any existing or proposed land level data to show what changes in land levels will be required to provide level access from the highway. Given the change in levels such information would be essential to inform the extent of works necessary. Furthermore, there is also little information with regard to the foundation construction for the proposed walls and gate pillars that may be required. In the absence of such information, I cannot be satisfied that there would be no detrimental effect on T1 in this regard.
15. In addition, the submitted plans do not detail of how level access would be provided from the parking area to the dwelling. There is no indication of a path linking the parking area to existing hard surfaced areas. Noting the

³ Within BS5837:2012 recommendations of 20% existing unsurfaced land in the RPA

requirement is to provide for disabled parking, delivering appropriate and level access may result in further additional works within the RPA.

16. A further pine tree has been identified as being covered by the TPO⁴. This tree is scheduled for retention. The evidence suggests that some incursion into the RPA of this tree would arise, albeit this does not appear to result in any significant incursion. Subject to appropriate measures the effect on this tree is likely to be acceptable.
17. For the above reasons, from the evidence before me, I have insufficient information to be satisfied that the development could be carried out without having an unacceptable effect on trees. The proposals therefore conflict with Policies SDC1 and SDC2 of the LP, and guidance contained within the Framework. Together, these require development to respond to character of the area, integrating landscape and environmental factors, and to ensure that important site features are retained.
18. However, I do not find conflict with LP Policy NE1 which appears to relate to matters regarding biodiversity sites and geodiversity.

Highway Safety

19. Vehicular access would be provided off Newbold Road which is a classified road, and, at the time of my site visit, I observed a constant flow of traffic in both directions. The access would be in close proximity to a roundabout and a pedestrian crossing.
20. The access would be flanked by pillars which are taller than the retained boundary wall. The pillars are of such a height where visibility, on exiting the site, would be largely obscured. Due to the narrow width of the access, the pillars would initially be very prominent in the driver's sightline. I acknowledge that, once past the pillars, the pavement may be of a width which could allow for some visibility of oncoming traffic from the roundabout. However, the submitted plan showing sight lines⁵ does not appear to correctly show the "x" and "y" distances from the proposed access and, therefore, I am unclear as to what visibility can actually be achieved. Notwithstanding this, the proposals do not provide for any pedestrian visibility splays. On exiting the site, immediate views of the pavement would be obscured by the height of the pillars. Therefore, the access would have the potential to result in conflict between vehicles and users of the pavement, leading to highway safety concerns.
21. The Highways Officer has advised that the width of the access is below standard and that the position of the gates are too close to the highway. I concur that the width of the access does appear to be narrow. I have no swept path detail to show that a vehicle can comfortably enter the site. Given the narrow width of the access, on entering the site, any misjudgement would require realignment and additional manoeuvres. This would have to take place within the limits of the public highway and has the potential to result in conflict with vehicles and other users of the highway.

⁴ T6 in the AR

⁵ Plan Ref: 23.045.06 – Proposed Site Lines

22. The positioning of the gates would be set back from the edge of the pavement within the site. I have not been presented with any evidence to demonstrate that the gates would be positioned in accordance with the Councils standards and, therefore, that a vehicle can pull clear off the limits of the highway without overhanging the pavement. I acknowledge that the gates could be electric, which the appellant would control. However, this does not account for any visitors who may not be able to remotely control the gate. An overhang onto the pavement would cause an obstruction to pedestrians, resulting in an unacceptable conflict between users.
23. The plans show an existing dropped kerb for the access to the adjacent property. From my observations on site, the extent of this dropped kerb appears to encroach further in front of the appeal property than that shown on the plans. Additionally, I have no information to demonstrate that the extent of proposed dropped kerb would meet the Councils standards for the width of the access proposed. Therefore, I concur with the Council, that there is insufficient clarity on this point.
24. For the above reasons, I have insufficient information to be satisfied that the proposed access can be provided without having a negative effect on highway safety. Therefore, the development would conflict with Policy D1 of the LP and guidance contained within the Framework. These require development to be designed to mitigate against their transport impacts.

Other matters

25. It is understood that the site has no off-street parking, and that the appellant currently use a nearby public car park. The proposal would provide parking for a disabled driver and this is a 'protected characteristics' embraced by the public sector equality duty under s149 of the Equality Act 2010. I am sympathetic to these circumstances, and while it would be advantageous to provide more convenient access, I can only attach moderate weight in favour of a development which would improve the quality of life for its occupants. I consider that this benefit does not outweigh the harm that the development would cause in relation to the main issues which, cumulatively, are significant. Therefore, it is proportionate and necessary to dismiss the appeal.

Conclusion

26. For the above reasons the appeal is dismissed.

D Cleary

INSPECTOR