



Appeal Decision

Site visit made on 26 March 2024

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd April 2024

Appeal Ref: APP/F1040/W/23/3334336

21 Main Road, Elvaston, Derby, Derbyshire DE72 3EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
 - The appeal is made by Mr Danny Jackson (Naylor Sale & Widdows LLP) against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2023/1195.
 - The development proposed is erection of two dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the application was determined, a revised National Planning Policy Framework (Framework) was published in December 2023. However, as any policies that are material to this decision have not fundamentally changed, I am satisfied that this has not prejudiced any party. I have had regard to the latest version of the Framework and new paragraph numbers in reaching my decision.

Main Issues

3. The appeal site is within the Green Belt. However, it is accepted by parties that the development would constitute limited infilling in a village and thereby would not be inappropriate development by virtue of paragraph 154e of the National Planning Policy Framework (the Framework). I see no reason to disagree. In that context the main issue is:
 - Whether the appeal site would be an acceptable location for development having regard to the effect of the proposal on the character and appearance of the area and having regard to the setting of Elvaston Castle a grade II* Registered Park and Garden, Village Hall and attached House and Clock House, grade II listed buildings and biodiversity.

Reasons

Character and appearance/heritage assets

4. Policy BNE5 of the Built and Natural Environment South Derbyshire Local Plan Part 2 states that development outside of settlement boundaries, as proposed here, within the Rural Areas will be granted where it accords with a number of criteria, two of which are directly applicable to the appeal proposal. These are that the development would be considered to be infill in keeping with the

character of the locality and would not unduly impact on landscape character and quality, biodiversity and heritage assets.

Significance of heritage assets

5. Elvaston Castle is a Grade II* Park and Garden covering about 80 hectares on the River Derwent floodplain and comprises formal gardens and pleasure grounds laid out in 1830-51.
6. The principal entrance was London Road Lodge at the southern end of the site from which a drive runs north to a large set of gates, known as the Golden Gate, north of which is the Castle. Other entrances are apparent through the gardens which consist of formal gardens to the south and south-east of the Castle, and less formal grounds with woodland and a lake to the north and north-east.
7. Its significance for the purposes of this appeal lies within its historic spatial relationship with Elvaston Castle and associated historic fabric as well as its expanses of formal and informal grounds with many mature trees giving a strong rural and parkland character.
8. The village hall and attached house is a grade II listed building originally constructed in 1852 as a school and attached school master's house. Constructed from red brick with yellow brick headers in Flemish bond with stone dressings and copings it retains much of its original construction and fenestration despite later additions. Its significance for the purposes of this appeal lies in its architecture and historical evidence of educational buildings in the local area. The maps supplied by the appellant show the appeal site as part of the school grounds. While this link has been diminished through the subdivision of the property and its change of use, it still gives space to the listed building allowing an appreciation of its significance and historical separation from the village.
9. The Clock House is a two storey building plus attics that was constructed around 1852 as purpose built flats for the old retainers of Elvaston Castle. It is formed from red brick with stone dressings and stone bands with a slate roof. Its significance for the purposes of this appeal is in its retained architecture and its historic association with Elvaston Castle and as an early example of purpose built flats for the poor. The building is set within a garden with a hedge boundary giving it a secluded setting located back from Main Road. Given its height, glimpses of the roof of the building can be seen from the appeal site and while its open form contributes to the character and appearance of the area, there is no historical connection to the Clock House that has been brought to my attention. From my observations therefore the appeal site does not contribute to the significance of the Clock House as identified above.
10. The appeal site lies along one of the secondary entrances, which is Elvaston Lane a Public Right of Way, leading to the Golden Gate just outside the Park and Garden. It forms part of No 21, which has been subdivided from the attached village hall to provide a private residence. It is formed from grassland, probably as part of the wider garden to No 21 being subdivided from the house by a driveway and garage and fencing. It is enclosed by a mixture of fencing, hedges and trees with a particularly thick hedge to the narrow Elvaston Lane.

11. Although there is housing development along Main Road, the appeal site is read as being part of Elvaston Lane to the rear of properties on Main Road. Here the area is less developed with built form along the lane restricted to the listed building to the north and the buildings associated with Avenue Farm to the south. While the entrance to the farm is wide the buildings are set well back so that the appearance to Elvaston Lane is open rather than built up. It is true that the approach opens out further west along Elvaston Lane, but nonetheless the lane has a strong rural spacious and verdant character which provides a bucolic entranceway to the Park and Garden as part of its setting, to which the appeal site in its current form contributes positively. I saw at my site visit that even though there are several access points to the Park and Garden, and the vehicular access is elsewhere, the lane was very well used by pedestrians.

Impact

12. The proposal is for two houses set back from Elvaston Lane with a car parking area to the front. The houses would fill the space between the boundary of the properties fronting Main Road and No 21. They would have a large footprint, and although one and a half storey would be a similar height to existing buildings creating a large mass of built form that would harmfully erode the open nature of the lane and the rural approach to the historic Park and Garden. This would be reinforced by hardstanding to the front of the properties to accommodate car parking. Due to their size and mass, their presence would compete with the village hall and attached house and harmfully erode the separation that the building has enjoyed along Elvaston Lane since at least 1881.
13. To form the access there would be a requirement to remove about 10 metres of the hedge along Elvaston Lane. The remaining hedge on this boundary would be realigned into the site to allow adequate visibility. This is a well-established hedge, which contributes to local distinctiveness and its removal and re-siting would be harmful to the rural verdant character and appearance of the area, the approach to the Park and Garden and the open setting of the village hall and attached house harming their significance. I appreciate that consent is not required for the removal of the hedge, however there is nothing definitive before me to suggest that there is even an outside chance of this occurring if the appeal were to be dismissed.
14. At the time of my site visit the appeal site was relatively clear. I understand though that there have been some structures there in the past. From the limited evidence before me these seem to have been small scale outbuildings associated with a garden use. The garage in the adjacent garden of No 23 Main Road is not particularly large and clearly subservient to the main dwelling and not comparable to the houses proposed on this plot. It is read as part of No 23 and its size and scale does not weaken the rural appearance of Elvaston Lane.
15. The design cues for the houses are taken from the adjacent listed building. However, they would not be replicas of it and would incorporate other modern details. I am satisfied that the design would be appropriate in this location and would not harmfully compete with the listed building.

Biodiversity

16. The Council has refused the planning application due to a lack of a Preliminary Ecological Appraisal (PEA). The appellant has submitted one as part of his

appeal. As this was submitted at the start of the appeal process, the Council has been aware of the submission and has had opportunity to comment, although none has been received.

17. The PEA finds that there are no protected species that would be affected by the development. Ten metres of hedgerow would need to be removed to provide access, but this would be compensated for by the planting of new hedgerow along the western boundary and infilling of the hedge on the northern boundary. A biodiversity metric calculation tool is also submitted which states that there would be a 11.23% increase in habitat units and a 21.85% increase in hedgerow units.
18. Based on the evidence before me therefore, I conclude that there would be no adverse impact on biodiversity on the appeal site with no conflict with Policy BNE3 of the Settlement Development South Derbyshire Local Plan Part 1 2016 (The Local Plan Part 1) and BNE7 of the Built and Natural Environment South Derbyshire Local Plan Part 2 2017 (the Local Plan Part 2).
19. For the reasons above therefore, I conclude that while the development would be infill and would not be harmful to biodiversity, it would not be in keeping with the character of the locality and would unduly impact on landscape character and quality and heritage assets. Consequently, I conclude that the appeal site would not be an acceptable location for development having regard to the harmful effect of the proposal on the character and appearance of the area and the setting and significance of Elvaston Castle a grade II* Registered Park and Garden and Village Hall and attached House a grade II listed building. It would therefore be contrary to Policies S1, BNE1, BNE2 and BNE4 of the Local Plan Part 1 and policies BNE5 and BNE10 of the Local Plan Part 2 and the Framework. Together these require that development protects, conserves or enhances heritage assets and their settings and respects local character and distinctiveness

Other Matters

20. The appellant draws my attention to two planning applications that were previously determined on the appeal site as well as applications in the local area, where the Council raised no concerns regarding the impact on heritage assets¹ or considered the sites to be within the setting of the various listed buildings and the Park and Garden. However, those on the appeal site were for the change of use of an outbuilding and the erection of a stable block and therefore subject to different considerations than two large houses as proposed here. Those elsewhere would not have the same relationship to the heritage assets as development on the appeal site, both in terms of distance and the development involved. Furthermore, I have found that the appeal site does not contribute to the significance of the Clock House.

Planning and Heritage Balance and Conclusion

21. I have found that the proposal would be harmful to the significance of heritage assets. Given that the setting is just one part of the significance, then the harm is less than substantial but nevertheless of considerable importance and weight.

¹ 9/2016/0501 & 9/2007/1043/F and 9/2011/0331/FH, 9/2014/0953 & DMPA/2021/0237

22. The proposal would deliver two houses that would contribute the Government's aim of significantly boosting the supply of homes on a small site that could be built out quickly, also supported by the Framework. Furthermore there would be economic benefits from the construction of the houses and the future spend of prospective occupiers in the local community. The Biodiversity Net Gain would also be a small benefit.
23. However, together these benefits would not outweigh the harm to the heritage assets.
24. I have found that the proposal would be contrary to local policies relating to the spatial strategy, heritage assets and the character and appearance of the area drawing it into conflict with the development plan as a whole. The material considerations I outline above are not sufficient to outweigh that conflict.
25. For the reasons above the appeal should be dismissed.

Zoe Raygen

INSPECTOR