



Appeal Decision

Site visit made on 30 April 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd May 2024

Appeal Ref: APP/Z1510/W/23/3334698

Land to rear of 95 Newland Street, Witham, Essex CM8 1YZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Mackay (Wethersfield Development Ltd) against Braintree District Council.
 - The application Ref is 23/00995/FUL.
 - The development proposed is to erect a block of 6 x 1 bedroom flats set over 2 floors with the associated communal gardens and parking.
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Decision

1. The appeal is dismissed and planning permission to erect a block of 6 x 1 bedroom flats set over 2 floors with the associated communal gardens and parking is refused.

Preliminary Matters

2. The application was amended whilst it was being considered by the Council. These amendments included the reduction in the number of proposed dwellings to six and alterations to the roof form including its change from a pitched roof to a flat one. I have considered the amended 6 dwelling scheme here.
3. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

4. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted a Statement that indicates planning permission would have been refused, had it decided the application. Distilling it to the simplest extent; it has indicated that its concerns rest upon the effect of the development on the Witham Town Centre Newland Street Conservation Area (CA), the living conditions for the future occupants of the development and parking and refuse provision.
5. I therefore consider the main issues to be:
 - a) whether the proposed development would preserve or enhance the character or appearance of the CA;

- b) if the development would provide satisfactory living conditions for the future occupants having regard to privacy, outdoor amenity space, internal floorspace, outlook and noise exposure; and
- c) whether the vehicle and bicycle parking and refuse storage arrangements adequately cater for the development.

Reasons

Character and appearance

6. The appeal site comprises land at the rear of Newland Street. Although it is described as being to the rear of 95 Newland Street, in practice, the site is to the rear of numbers 95 to 101. The site forms part of the CA, the significance of which derives principally from the variety of characterful buildings addressing Newland Street in a medieval layout, albeit much altered with many Georgian, Victorian and later alterations being apparent. Much of the medieval plan remains however; with frequent and often narrow lanes, paths and access roads leading to open areas beyond. These narrow lanes offer occasional and fleeting views to this open land to the rear. Indeed, access to the site, between 95 and 99 is an example of this. Where buildings do exist to the rear of the main preponderance of buildings, they are commonly subordinate extensions or low scale outbuildings, albeit in various forms and of mixed quality. Many areas to the rear have been given over to car parking, often in a haphazard and unsympathetic manner, nevertheless, the open aspects remain.
7. Some recent developments have been permitted by the Council or at appeal in these backland areas. Commonly, buildings in these schemes run at right angles to the pattern of development addressing Newland Street, these broadly remain subordinate and do not close off views from Newland Street to areas at the rear. The example of 111 Newlands Street¹ is an example of this where, subordinate buildings follow the line of Kings Chase. Although this lane is not wide, it remains one of the more notable ones leading off Newland Street and the scale of those proposed buildings is commensurate with its importance. Conversely, the development at 47-51, which does have a form of buildings parallel with Newland Street, does not block off rear views as there are no such views available.
8. The proposed dwellings at the appeal site would present as a large, broadly T-shaped block with a flat roof. It would not present as a subordinate or respectful addition to the buildings addressing Newland Street and its position would appear merely functional, bearing no relation to the medieval street pattern or any logical evolution of the built form. The proposed position of units 2 and 5 would close off views from along the laneway between 95 and 99 Newland Street and whilst doing so, offer an uninteresting and jarring elevation with poorly articulated windows and negligible detailing to the facade.
9. S72(1) of the Planning (Listed Buildings and Conservation Areas Act) 1990 places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. In making this assessment I have also had regard to paragraph 207 of the Framework. The introduction of this building, in a manner that would close off views and its effect on

¹ APP/Z1510/W/22/3293210

elements that are important to the significance, would harm the character and appearance of the CA.

10. The Framework advises, at Paragraph 205, that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Accordingly, while less than the substantial harm referred to in the Framework, the harm to the CA is nevertheless a matter of considerable importance in this case.
11. Paragraph 208 of the Framework also requires that, where a development proposal would 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. The only public benefit in this instance is the addition of six dwellings to the supply of housing. However, that benefit is limited in the context of the District's overall supply of land and cannot outweigh the identified harm to the CA.
12. I conclude that, the development of these six dwellings, in this large and unsympathetic flat block, would fail to preserve or enhance the character or appearance of the CA. The proposal therefore fails to accord with policies SP7, LPP47 and LPP53 of the Braintree District Local Plan 2021 (BLP), Witham Town Centre Newland Street Conservation Area Appraisal and Management Plan 2007 and provisions of the Framework. Read as a whole these policies require new development to respect and respond to the local context, especially in the historic areas, where development may affect the setting of listed buildings and conservation areas.

Living conditions

13. Policy LPP52 of the BLP relates to the design and layout of development and, amongst other things, requires that residential developments shall provide a high standard of accommodation and amenity for all prospective occupants.
14. The layout of the development is such that the dwellings would have little access to private outdoor amenity space. The green space outside unit 1 would adjoin a car park and the service areas to shops addressing Newland Street. The area to the rear of unit 2 may offer a degree of enclosure and reasonable outdoor amenity space for this dwelling. However, it is to be shared with the others in the scheme which may result in detriment to the living conditions of unit 2 due to a lack of privacy were the residents of other dwellings to use it. I therefore conclude that insufficient outdoor amenity space of sufficient quality is available for the future occupants and the proposed development would not comply with BLP policy LPP52 in this respect.
15. In terms of their floorspace, I have noted that the plans indicate that all dwellings would have a double bedroom and all but unit 4 are described as one bedroom one person dwellings (1B1P). Five of these dwellings have a floorspace of 47 square metres and they therefore fall below the minimum 50 square metres set out in the Nationally Described Space Standard (NDSS) for a one bedroom two person dwelling (1B2P).
16. The NDSS notes at Technical Requirement 10d that a 1B2P dwelling should have a minimum of 11.5 square metres for the bedroom. The dwellings

proposed here have bedrooms of 12.7 and 12.8 square metres. I must therefore regard all the dwellings proposed as being 1B2P homes due to the bedroom size. Accordingly, all but unit 4 do not meet the minimum space standard for 1B2P dwellings.

17. Whilst the NDSS is not referred to in policy LPP52 of the BLP, I am satisfied that its intent is sufficiently expressed in criterion p. of this policy. Therefore, the proposed dwellings are of an insufficient size to provide a satisfactory amount of living space for 1B2P dwellings and the development conflicts with BLP policy LPP52.
18. However, the outlook from the dwellings would be sufficient to provide satisfactory living conditions for the future occupants. The distance to neighbouring buildings is such that there would be no overbearing effects due to their proximity. The dwellings that principally face north have alternative aspects to provide morning or afternoon sunlight. Accordingly, in this regard the development complies with policy LPP52.
19. The noise report provided undertook its assessment whilst Newland Street was closed to traffic. However, this report did reference an earlier assessment and utilised background noise levels from this earlier date when Newlands Street was open to traffic. The assessment found that the main area of concern related to the use of extraction equipment for premises addressing Newlands Street. This is outside the appeal site and not within the control of the appellant. Even so, the noise levels were not excessive. Therefore, with an appropriate condition relating to additional investigation and mitigation, were permission to be granted, the development could comply with policy LPP52 insofar as it relates to noise exposure for the future residents.

Parking and refuse

20. The proposed development provides six vehicle parking spaces and two visitor spaces. However, the visitor spaces are below the minimum size set out in the Essex Parking Standards 2009 (EPS). Nevertheless, the development provides one space per dwelling and its town centre location is such that additional parking provision would not be needed. Although the proposed visitor spaces are substandard in terms of their dimensions, they should not be permanently occupied. Moreover, as these spaces are arranged as a standalone pair, they have a degree of extra space to the sides such that they can comply with the intent of the EPS.
21. Only five cycle parking spaces are indicated on the plans. This falls short by one cycle space. However, there is space at the location of the cycle store, or elsewhere on the site, for one additional cycle space and this could be secured by way of condition were permission to be granted. The proposed development could therefore comply with the provisions of the EPS.
22. Waste storage provision is shown on the submitted plans. Whilst the number and capacity of bins, or the manner of collection, remains unclear from the application material; this could be addressed through the imposition of a condition in order to comply with policy LPP52 of the BLP. This policy, amongst other things, requires new developments to incorporate details of waste storage and collection arrangements, including provision for recycling, within the site.

Planning Balance and Conclusion

23. At the time of the submission of the planning application, the appellant states that a five-year supply of deliverable housing sites could not be demonstrated. In the intervening period, the evidence shows that the Council has recalculated its housing land supply position and considers that 5.8 years supply of such land is now available.
24. Even if I were to accept that the Council did not have five years supply of deliverable housing land, and, Framework paragraph 11(d) is triggered for the reasons cited by the appellant; the identified harm to the CA provides a clear reason for refusing the proposed development. As such, the circumstances at paragraph 11(d)(i) of the Framework are engaged and the presumption in favour of granting planning permission does not apply.
25. The proposal would not preserve or enhance the character or appearance of the CA, it would suffer from a lack of privacy and would provide inadequate internal space and outdoor amenity areas for the future occupants. The proposed development would, however, give those future occupants acceptable levels of outlook and would not subject them to unacceptable noise exposure. Vehicle and cycle parking provision would be sufficient, as are refuse arrangements, with conditions. Even so, the conflicts I have found mean that the proposal does not comply with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
26. The appeal is dismissed and planning permission is refused.

Nick Bowden

INSPECTOR