



Appeal Decision

Site visit made on 18 April 2024

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Appeal Ref: APP/F1040/W/23/3332913

Melbourne Community Centre, Church Street, Melbourne, Derbyshire DE73 8EJ

- 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 Melbourne Hall Estate against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2023/0673, dated 23 May 2023, was refused by notice dated 21 August 2023.
 - The development proposed is the demolition of the existing building and development of five new dwellings with associated amenity space and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and the development of five new dwellings with associated amenity space and car parking, at Melbourne Community Centre, Church Street, Melbourne, Derbyshire DE73 8EJ in accordance with the terms of the application, Ref DMPA/2023/0673, subject to the conditions in the schedule at the end of this decision.

Procedural matter

2. The revised National Planning Policy Framework ('the Framework') was published on 20 December 2023 after the appeal had been made by the appellant. However, as no changes were made to the conserving and enhancing the historic environment section of the Framework, and the other changes that were made are not material to this decision, the appellant's case has not been prejudiced by not being able to comment on the revised Framework.

Application for costs

3. An application for costs was made by Melbourne Hall Estate against South Derbyshire District Council. This application will be the subject of a separate decision.

Main Issue

4. The main issue in this appeal is the effect of the proposed development on the character and appearance of Melbourne Conservation Area.

Reasons

5. In relation to the development plan, it is common ground between the Council and the appellant that in terms of its location residential development of the site is acceptable in principle. I agree with that position.

6. Concerns were expressed at application stage regarding the loss of the Senior Citizen's Centre on the site which was a community facility. However, as those groups that previously used the building have found alternative venues within the village, I concur with the assessment that the proposed development would not result in the loss of a community facility that needs to be retained.

Conservation Area

7. The appeal site is located within Melbourne Conservation Area (CA). In the exercising of planning functions, the statutory test in relation to CAs is that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the CA. Policies BNE1 and BNE2 of the South Derbyshire Local Plan Part 1 and policies BNE7 and BNE10 of the South Derbyshire Local Plan Part 2 require the protection of the character and appearance of a locality, including heritage assets and trees, through high quality design that respects local design features.
8. The Framework is an important material consideration. It identifies that heritage assets are an irreplaceable resource. Paragraph 205 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, such as a CA and listed buildings, great weight should be given to the asset's conservation.
9. In terms of assessing the significance of the CA and the contribution that the appeal site makes to it, I have taken into account the Melbourne Conservation Area Character Statement, the comments of all parties and my observations during the site visit.
10. The CA covers the village centre and its environs that contain well designed older and historic buildings. Brick used for the construction of the external walls of buildings and slate for covering roofs are the most commonly used building materials, followed by stone and clay tiles. Some timber framed buildings are also present. The significance of the CA, which largely date from the 11th through to the 19th centuries, is therefore architectural and historical.
11. The appeal site is a spacious plot with off road parking that has been occupied since the 1960s by the now closed and dilapidated Community Centre. Whilst the single storey, flat roofed, wooden building is at odds with surrounding buildings which are typically older, taller and exhibit a finer grain of development, the low key nature of the building and the mature landscaping on the plot has allowed the development to assimilate well with its surroundings. Nevertheless, redevelopment of the site provides the opportunity to better preserve or enhance the CA.
12. Prior to 1940 and its loss due to enemy bombing, The Lodge, which was a three storey Georgian town house with a walled garden, occupied the majority of the appeal site. The Lodge was located in the south eastern corner of the site abutting the neighbouring house, 65 Church Street. Set close to the back edge of the pavement the house occupied approximately a third of the gap separating No 65 from the 'Spirit Vaults' public house on the western side of the appeal site. On the basis of the submitted historical photograph, the gap between the house and the public house was in part enclosed by a tall boundary wall set on the back edge of the pavement with single storey ancillary buildings behind. The central area of the site appears from the photograph and OS maps to have been open.

13. It is not possible to tell from the photograph what was present on the Church Street side of the plot. On the basis of the historic OS map excerpts that have been provided it appears that sporadic buildings were present along with some form of boundary treatment. Either way, owing to the presence of the house it appears likely that views of the Grade I listed Church of St Michael and St Mary to the south would have been limited or not possible from Castle Street.
14. The proposed development would result in a three storey traditional detached house on Church Street located next to the public house, rather than next to No 65. In so doing, together with the proposed front boundary wall which would be set back slightly from the pavement, it would create a similar extent of enclosure to that which existed historically on the street. The boundary wall would be broken by the existing vehicular access which would be retained. However, this is a reasonable concession in order to remove cars from the street. A plaque commemorating those who died in the bombing in 1940 would be moved from its existing position within the site to the front of the site on Church Street.
15. As part of the proposal, a terraced row of four dwellings would be built facing Castle Street. In order to retain existing views of the listed church and provide on-site parking, the terrace would be set further back from Castle Street than many of the other dwellings along this road and rather than arranged parallel to the street it would be angled slightly away from it. This layout is different to other development along this street. However, in preserving the views of the side of Grade I listed Church of St Michael and St Mary from Castle Street, which help better reveal the architectural and historical significance of this heritage asset, as supported by paragraph 212 of the Framework, this difference is justified.
16. Part of the CA's attractive character is the variation in the buildings along its streets. Whilst the houses within the proposed terrace would be identical, the terrace is short and in the wider context of Castle Street viewed as a whole the inclusion of the proposed development would result in a street scene that would remain sufficiently varied. The architectural features of all the proposed dwellings would be in keeping with those seen within the CA.
17. In views from Church Street, on-site parking would partly be screened by the proposed boundary walls on both sides of the access. In views from Castle Street, parking would be located directly behind the existing relatively low sandstone wall. However, as the terrace would be set back from the parking area on a slightly higher part of the site the parked cars would not unduly detract from the appearance of the terrace and its contribution to the street scene.
18. Of the trees on the site that would be removed to facilitate the development the copper beech on Church Street is the most prominent. It is a middle mature tree that lacks the full rounded form of good examples of this species. In my judgement, it is therefore only of moderate amenity value. The other trees that would be removed are located along the western boundary of the site and form part of the backdrop to the Community Centre. Individually and collectively they are of low amenity value. Given that the submitted plans show that the trees which would be removed on the site would be replaced with significant new planting, in time, subject to proper maintenance, the contribution that they would make to the character and appearance of the CA would compensate for the loss that would occur.

19. Taking all these matters into account, I therefore find that whilst the proposed development would result in change, this change would not have an adverse effect on the character or appearance of the CA. As a result, the objective of preservation would be achieved. I recognise that the view of both of the main parties is that the proposed scheme would cause harm to the CA and that this harm would be less than substantial. In accordance with paragraph 208 of the Framework, this would require the harm caused to be weighed against the public benefits of the proposal. However, as the decision maker I am entitled to reach a different view in relation to this matter.
20. For the reasons that I have given, I therefore conclude that the design of the proposed development would complement the character and appearance of the CA. As a result, it would comply with the statutory test and policies BNE1 and BNE2 of the South Derbyshire Local Plan Part 1 and policies BNE7 and BNE10 of the South Derbyshire Local Plan Part 2.

Other matters

21. There are a significant number of listed buildings within a short distance of the appeal site. The closest listed buildings to the appeal site are the Grade II listed 49, 51, 62 and 65 Church Street. The Grade I listed Church of St Michael and St Mary is also within visual distance of the appeal site. The significance of these buildings is architectural and historical and their setting contributes to their significance.
22. In the exercise of planning functions, the statutory test in relation to a listed building is that special regard shall be had to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.
23. Insofar as is relevant to this appeal the proposed development would lie within the visual and historic setting of the buildings listed. However, as it would be well designed and complement the existing built form whilst retaining open views across the site, it would not harm the setting or significance of these designated heritage assets.

Conditions

24. In the interests of certainty, I have imposed a condition specifying the relevant plans that the development is to be carried out in accordance with. In order to ensure that the development complements its surroundings, further details of external materials and landscaping are required. To ensure that any planting becomes well established, and contributes to the quality of the development into the future, it needs to be well managed and maintained. Furthermore, the trees which are to be retained need to be protected.
25. To protect the living conditions of future occupiers, assessments in relation to odour and noise from the neighbouring public house are required. To protect the living conditions of nearby occupiers during development from dust and noise, a scheme for dust mitigation is needed and hours of work need to be restricted. To protect the privacy of neighbours, certain windows to some of the houses need to be obscurely glazed.
26. In the interests of highway safety, a plan for managing the construction site, the provision of adequate visibility splays and the provision of on-site parking and turning needs to be provided. For the same reason, adequate drainage, the laying of a hardbound surface close to the highway and the setting back of gates from the highway are also needed.

27. In relation to ecology and biodiversity, a bats survey is required and, if bats are present, a mitigation scheme will be needed. To protect birds, the type of work that can be carried out on site needs to be restricted during the bird nesting season. To protect biodiversity, details of lighting are required. To enhance biodiversity, measures need to be incorporated into the development for the benefit of birds, bats and hedgehogs. To protect any bats on the site, the precautionary approach set out in the submitted Protected Species Survey needs to be followed.
28. To sustainably manage water use in accordance with the development plan, the optional standard regarding daily water use needs to apply to the development.
29. As there is potential for the remains of medieval and post medieval buildings on the site, an archaeological scheme of investigation is necessary. Given the sensitive location of the appeal site within the CA and the carefully balanced design of the scheme, it is necessary to remove permitted development in relation to the dwellings.
30. I have required all these matters by condition, revising the conditions suggested by the Council where necessary to reflect the advice contained within Planning Practice Guidance.

Conclusion

31. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should therefore be allowed.

Ian Radcliffe

Inspector

Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Existing Site Plan (received 23 May 2023)
 - Location, Site and Access Plan FINAL REV B-A2L-2209-MHSCC-A-P01 (received 19 July 2023)
 - Plot 5 Floor Plans & Elevations FINAL REV B-A2L-2209-MHSCC-A-P03 (received 19 July 2023)
 - Plots 1-4 Floor Plans & Elevations FINAL REV B-A2L-2209-MHSCC-A-P02 (received 19 July 2023)
 - Site Section & Site Plan FINAL REV B-A2L-2209-MHSCC-A-P05 (received 19 July 2023)
 - Plot 5 Street Scene FINAL REV B-A2L-2209-MHSCC-A-P04 (received 19 July 2023)unless as otherwise required by condition attached to this permission.
- 3) No development shall start until a Highway Construction Management Statement /Plan has been submitted to and approved in writing by the Local Planning Authority. The statement / plan shall include details specifically relating to:

- a) parking for vehicles of site personnel, operatives and visitors
- b) site accommodation
- c) storage of plant and materials
- d) provision of roadside boundary hoarding behind any visibility zones
- e) any proposed temporary traffic management.

The approved details shall be implemented and maintained throughout the construction period.

- 4) Prior to commencement of the development, a noise report following the methodology in BS4142 and BS8233 shall be submitted to the Local Planning Authority, which shall assess the noise from the extraction unit and raised terrace from the neighbouring public house (no. 53 Church Street) on the proposed development. No development shall take place until a written scheme providing full details of controls for noise mitigation identified as being necessary have been agreed in writing with the Local Planning Authority. Prior to first occupation of any of the dwellings hereby permitted, the noise mitigation measures approved as being necessary by the Local Planning Authority shall have been implemented.
- 5) Prior to commencement of the development, an odour survey report that complies with IAQM guidance on the assessment of odour shall be submitted to the Local Planning Authority, which shall assess the potential odour impact from the neighbouring public house on the proposed development. No development shall take place until a written scheme providing full details of controls for odour mitigation identified as being necessary have been agreed in writing with the LPA. Prior to first occupation of any of the dwellings hereby permitted, the odour mitigation measures approved as being necessary by the Local Planning Authority shall have been implemented.
- 6) No development, including demolition, shall take place until a scheme of dust mitigation measures has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented throughout the demolition and construction period.
- 7) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority. The scheme shall include an assessment of significance and research questions; and
 - 1. The programme and methodology of site investigation and recording
 - 2. The programme for post investigation assessment
 - 3. Provision to be made for analysis of the site investigation and recording
 - 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - 5. Provision to be made for archive deposition of the analysis and records of the site investigation
 - 6. Nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation

No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved in this condition.

The development shall not be occupied until the site investigation and post investigation reporting has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under this condition and the provision to be made for publication and dissemination of results and archive deposition has been secured.

- 8) No development (including demolition or vegetation clearance) shall commence until an internal building inspection has been undertaken to determine the suitability (Low, moderate or high) for the building to support bats and a Ground Level Tree Assessment (GLTA) shall be undertaken to identify potential roosting features within the trees to be felled. The survey shall be undertaken in accordance with the Bat Surveys for Professional Ecologist - Good Practice Guidelines (Collins, 2016).

Following the inspection and survey, and if required, further emergence surveys undertaken in accordance with the aforementioned guidelines, in the event that roosting bats are evidenced, a scheme of appropriate mitigation that meets Natural England's mitigation licensing requirements shall be submitted to and agreed in writing with the Local Planning Authority. Such approved mitigation shall be implemented in full and retained as such for the lifetime of the development.

- 9) No development, including preparatory works, shall commence until protective fences have been erected around the silver birch trees shown to be retained on the approved plans and as per the Arboricultural Impact Assessment TWC_399_R-002A (Tree and Woodland Company) (received 23 May 2023). Such fencing shall conform to best practice as set out in British Standard 5837:2012 (or equivalent document which may update or supersede that Standard) and ensure that no vehicles can access, and no storage of materials or equipment can take place within, the root and canopy protection areas. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.
- 10) Prior to the first occupation of any dwelling hereby permitted, the existing access to Church Street shall be provided with visibility sightlines of 2.4m x 43m in both directions. The area within the sightlines shall thereafter be kept clear of any object greater than 1m in height (0.6m in the case of vegetation) above the nearside carriageway channel level.
- 11) Prior to the first occupation of any dwelling hereby permitted a pedestrian inter-visibility splay of 2m by 2m shall be provided on each side of the access, the depth measured from the back of the footway and the widths outwards from the edges of the access. No fence, wall or other obstruction to visibility between 0.6m and 2m in height above ground level shall thereafter be erected within the area of such splays.
- 12) Prior to the first occupation of each dwelling, space shall be provided for the parking of vehicles associated with that dwelling in accordance with the approved plans and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, such

space shall be maintained throughout the life of the development free of any impediment to its designated use.

- 13) The development hereby permitted shall not be occupied until such time as the access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary (back of footway) and, once provided, shall be so maintained in perpetuity.
- 14) Prior to the construction of any driveways or parking areas, details of surface water drainage provision to those areas (so as to adequately mitigate runoff of surface water on to the highway) shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage details shall be fully implemented prior to first occupation of any of the dwellings hereby approved and thereafter shall be maintained in a fully functional state.
- 15) Any entrance gates shall be set back a minimum of 5m from the highway boundary (back of footway) and maintained at that distance for the life of the development unless otherwise approved in writing by the Local Planning Authority.
- 16) Except in an emergency, no demolition, site clearance, construction, site works or fitting out shall take place other than between 08:00 hours and 18:00 hours Mondays to Fridays, and between 08:00 hours and 13:00 hours on Saturdays. There shall be no such activities whatsoever on Sundays, public holidays and bank holidays.
- 17) Notwithstanding the submitted details, prior to incorporation within the development, a detailed scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The scheme should evidence the proposed locations of each tree species, the size of each type of tree (standard, select standard, or heavy standard with girth dimensions), the mix of any proposed grass areas, and the proposed locations and sizes of any ornamental shrubs (in litre pots). The works shall be undertaken in accordance with the agreed details prior to occupation of the development. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the date of this decision; and any plants which within a period of five years (ten years in the case of trees) from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species and thereafter retained for at least the same period, unless the Local Planning Authority gives written consent to any variation.
- 18) Prior to the installation of lighting fixtures, a detailed lighting strategy shall be submitted to and approved in writing by the LPA to safeguard bats and other nocturnal wildlife. This should provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of light spill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/18 - Bats and Artificial Lighting in the UK (BCT and ILP, 2018). Lighting shall be installed and thereafter retained in accordance with the approved details.
- 19) No stripping, demolition works or vegetation clearance shall take place between 1st March and 31st August inclusive, unless preceded by a nesting

bird survey undertaken by a competent ecologist no more than 48 hours prior to clearance. If nesting birds are present, an appropriate exclusion zone will be implemented and monitored until the chicks have fledged. No works shall be undertaken within exclusion zones whilst nesting birds are present.

- 20) The following Biodiversity Enhancement measures shall be incorporated within the scheme, as set out on a plan to be submitted to and agreed in writing by the Local Planning Authority, prior to construction above foundation level:

- 5x Integrated Universal Bird Bricks
- 5x Integrated Bat Bricks
- 130mm x 130mm hedgehog gaps to be incorporated within fencing.

Prior to first occupation of any of the dwellings hereby permitted, the approved measures shall be implemented in full and maintained thereafter.

- 21) Notwithstanding the submitted details, prior to incorporation within the development, samples and detailed specifications of all external facing and hard landscaping materials to be used shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 22) Each dwelling shall be constructed and fitted out so that the estimated consumption of wholesome water by persons occupying each dwelling does not exceed 110 litres per person per day, consistent with the Optional Standard as set out in G2 of Part G of the Building Regulations (2015). No development shall occur above ground level until the building control body for the development has been informed that this optional requirement applies.
- 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order, the dwellings hereby permitted shall not be enlarged, extended or altered, no satellite dishes shall be affixed thereto, and no buildings, gates, walls, fences or other means of enclosure (except as authorised by this permission or allowed by any condition attached thereto) shall be erected on the site without the prior grant of planning permission pursuant to an application made to the local planning authority in that regard.

-----**End of Schedule**-----