



Appeal Decision

Site visit made on 30 July 2024

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22nd August 2024

Appeal Ref: APP/M0933/W/24/3340068

Land adjacent to 17 Gillinggate, Kendal

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Wilson against the decision of Westmorland and Furness Council.
 - The application reference is SL/2023/0174.
 - The development proposed is a detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effects of the proposal on the character or appearance of the Kendal Conservation Area;
 - the effects of the proposal on highway safety; and
 - whether the proposal would provide acceptable living conditions for future occupiers with regard to outdoor amenity space.

Reasons

Kendal Conservation Area

Significance

3. The appeal site is within the Kendal Conservation area (the CA). Gillinggate is a purposely planned mid to late nineteenth century conception. On the north side there is a denser pattern of development in the form of long rows of terraced housing. On the south side, west of the junction with Anchorite Fields, there are predominantly detached dwellings of varying architectural forms set within gardens, giving a more fragmented grain of development compared to the north side. The landscaping within many of these gardens together with the vegetation along the line of the watercourse to the south provide a pleasant verdant backdrop to the buildings. The materials and architectural detailing on the buildings, including a number which display the arts and crafts style, provide a consistency to the built form, and contribute positively to the character and appearance of the area. The significance of the CA is in part derived from these aspects.

Effect of the Proposal

4. The proposed dwelling would front onto Gillinggate on a similar line to other dwellings to the south of the road and would be of a proportionate height to the properties on either side taking account of the sloping topography. The proposed dwelling would be of some depth, but this would not be markedly out of scale with a number of the large, detached properties along this part of Gillinggate and of itself would not be an incongruous feature. However, in combination with the front elevation filling almost the full width of the site, the proposed building would appear to take up a substantial amount of the plot which would notably contrast with many of the other detached dwellings. While views of the landscaping and vegetation to the rear would still be possible, this would be due to the gaps to the side of the neighbouring properties rather than because of the scale and layout of the proposed dwelling.
5. The proposed dwelling has sought to include a modern interpretation of some of the architectural features that are present within other nearby buildings. On the front elevation this includes the use of a flat roof dormer, projecting gable, and L shaped façade. The proportions would not exactly match those of other buildings including those adjacent, such as the positioning of the windows relative to the eaves and the roof pitch of the gable. Nonetheless, these aspects have sought to take their cues from design features in the existing built form that contribute positively to the architectural character of the area. In addition, the use of render and limestone for the walls and Westmorland green slate for the roof would be consistent with the palette of materials in the CA. Given the information that has been submitted, further design details for the flat roof dormer and window materials could be secured through a planning condition.
6. However, I was unable to identify any integral garages of the scale proposed here. This gives a more modern appearance to the front of the dwelling which would jar with the surrounding built form, despite the design elements highlighted above.
7. The proposed dwelling would be three storeys at the rear reflecting the topography of the site. This would be consistent with the adjacent dwelling at Windyridge. However, the greater width of the proposed dwelling would result in a building with a markedly greater massing than the neighbouring properties that it would be seen with. The large amounts of glazing and the sizeable balcony with glazed balustrade across the full width of the building would significantly contribute to its presence. The combination of these features would result in an overall imposing and bulky building when seen from the rear.
8. The rear elevation would be more overtly contemporary than the front, incorporating a mix of pitched and flat roofs, timber cladding, extensive use of glazing including the glazed balcony. It does not appear to take clear reference from locally distinctive features, proportions, or shapes in the way that the front elevation has sought to do.
9. Consequently, the rear of the building would appear discordant, notwithstanding the proportion of the elevation that would be stone and render.

10. While the rear elevation would be less visible, it would nevertheless be seen through gaps in the buildings from Anchorite Fields and from Greengate Lane towards the CA. Additionally, the character of the CA derives from the buildings, layout and surrounding spaces as a whole, regardless of whether particular elements are open to public view. Its significance does not therefore rely only on the elements that can readily be seen.
11. Overall, therefore, while there are some moderating factors in terms of design cues from the surrounding materials and architectural detailing within the CA there would be a marked contrast between the existing built environment and the proposal. Therefore, as a whole, the building would appear unduly prominent and incongruous.
12. I am aware that planning permission was granted for a large dwelling on the site in 2013¹ (the 2013 scheme). In its officer report, the Council considered that this permission has lapsed. However, a pre-application response² issued by the Council following its refusal of the appeal scheme states that this permission is believed to have commenced within the required three years.
13. Even if the 2013 scheme has an extant permission, and I were able to attribute some weight to it, I do not find it determinative of this main issue, which I have considered on the basis of the planning merits of the specific proposal before me. Furthermore, the Council considered that the 2013 scheme preserved the character and appearance of the CA. In my view the 2013 scheme, while comprising less stone than the appeal proposal and being taller, has taken a clear reference from locally distinctive features and proportions such as the canted bay windows and front gables. Additionally, the use of gables helps to break up the overall massing of the rear elevation and the integral garage and rear balcony are more subtle features. The 2013 scheme is therefore less divergent in terms of form to the existing built environment.
14. For the reasons given, I conclude that the proposal would fail to preserve or enhance the character or appearance of the CA and would lead to less than substantial harm to the designated heritage asset.

Balance and Conclusion

15. The proposal would contribute to the supply of housing which would accord with the objective of the Framework to significantly boost the supply of homes. There would also be construction employment and additional residents supporting local services and facilities. However, the weight that I afford these public benefits in terms of one dwelling is inevitably limited.
16. The proposed dwelling has been designed with Passivhaus Principles in mind and to be Building Regulations Accessibility Part M4(2) compliant, which was not the case with the 2013 scheme. These considerations weigh moderately positively for the proposal.
17. The appellant contends that the parking proposed as part of the appeal scheme would provide more usable spaces and a turning area, unlike the 2013 scheme. While improvements to highway safety would be a public benefit, as set out below, I cannot be certain that the appeal scheme would be satisfactory in terms of highway safety, even with vehicles exiting in a forward gear.

¹ Reference SL/2013/0095

² Appendix G of the appellant's appeal statement

18. The public benefits in this case are not sufficient to outweigh the harm that would be caused to the character and appearance of the CA to which I give considerable importance and weight. They do not represent clear and convincing justification for harm to or loss of significance of the designated heritage asset, as required by paragraph 206 of the Framework.
19. The proposal would therefore be contrary to Policies CS1.1 and CS8.10 of the 2010 adopted South Lakeland Local Development Framework Core Strategy (the Core Strategy) and Policies DM1, DM2 and DM3 of the 2019 adopted South Lakeland Development Management Policies Development Plan Document (the DMP). In summary, and amongst other matters, these policies seek to safeguard the special architectural or historic interest of the area and ensure that development responds to local character and distinctiveness and preserves or enhances the special character and appearance of CAs. There would also be conflict with the Framework objectives for the historic environment as summarised above.

Highway Safety

20. The Highway Authority requires the access to have a 43-metre visibility splay in both directions from a point 2.4 metres down the centre line of the access and the nearside channel line of the carriageway edge. The appellant relies on the access details approved as part of the 2013 scheme and subsequent discharge of condition approval³, which it is stated the appeal proposal would accord with.
21. The visibility splays approved as part of the 2013 scheme⁴ indicate 45 metre splays but not from a point 2.4 metres down the centre line of the access. The plan submitted to discharge condition 10 of the 2013 permission⁵ refers to 2.4 by 33 metre visibility splays. It is not evident from these plans whether the visibility splays were measured to the nearside of the kerb of the main highway, which allows for vehicle overtaking when assessing visibility to the left-hand side. There are no features preventing vehicles from crossing the centre line on the approach to the site from the left and there are parking bays on the north side of Gillinggate on the approach to the site which narrows the width of the highway to an extent. Consequently, there is the potential for vehicles approaching the site from the left to be across the centre line of the road.
22. Neither of these plans approved as part of the 2013 scheme are consistent with the current requirement of the Highway Authority. In this respect, I note that the Council identifies that a new Development Management Plan and Highways Design Guide have been published since the determination of the 2013 scheme. While there may be some continuity between the previous and current versions, I cannot be sure that the policies and guidance including any technical standards remain the same.
23. Consequently, it is not clear from the evidence before me that the visibility splays now required by the Highway Authority would be achievable. Given this uncertainty, it would not be appropriate to defer consideration of this matter to a planning condition.

³ Reference SL/2016/0680

⁴ plan P-08 rev D (proposed ground and first floor plans)

⁵ plan P-100 rev A

24. The Council also has concern that the proposal would not provide adequate visibility of pedestrians on the pavement for drivers exiting the site. The site plan submitted with the appeal scheme, reference 2304-015, shows some angles but they are drawn from a point at the back edge of the pavement. This plan does not therefore provide sufficient information to demonstrate that a driver would have a full view of the pavement before the bonnet of the vehicle has manoeuvred onto it, even if exiting in a forward gear.
25. However, the plan submitted to discharge condition 10 of the 2013 permission⁶ shows splays of 2.4 by 2.4 metres either side of the access into the driveway, subject to a reconfiguration of the boundary wall. I am therefore satisfied that it would be possible to achieve an access configuration that would provide appropriate visibility of users of the pavement, and so this could be secured by a condition. However, this does not overcome the concern set out above regarding the failure to demonstrate that the required level of visibility for vehicles would be achieved.
26. The Highway Authority would require the height of any boundary wall to be reduced to 1.05 metres, and as noted above, to achieve appropriate visibility of pedestrians, its reconfiguration would be required. I do not share the Council's concern that reducing the height of the wall would harm the character or appearance of the CA. The Council has not specifically identified what harm would result. There is nothing in evidence that specifically identifies walls as a key characteristic of the CA. In my view, the wall makes a neutral contribution to its character and appearance. I also observed that the front boundary features of many of the nearby buildings comprise low stone boundary walls.
27. Based on the evidence before me, I cannot be satisfied that the required visibility distance for vehicles could be achieved at the site access. Without further clarity on the required visibility splays and how they could be achieved, the proposal would increase the potential for conflict between road users. I therefore conclude that the proposal would result in an unacceptable impact on highway safety. Accordingly, it would conflict with the highway safety requirements of Policy CS10.2 of the Core Strategy, Policies DM1 and DM2 of the DMP and the Framework.
28. The Council refers to Policy CS1.1 of the Core Strategy in its reason for refusal relating to this issue. However, as this policy does not include criteria specifically addressing highway safety matters, I do not find a conflict with respect to this main issue.

Living Conditions – Outdoor Amenity Space

29. I have not been referred to any quantitative standards for private outdoor amenity space in the Council's development plan or any associated guidance. However, Policy DM1 of the DMP requires that developments ensure the delivery of acceptable levels of amenity for future users and occupants, including through the provision of adequate private space. Paragraph 135 of the Framework requires planning decisions to ensure that developments create places with a high standard of amenity for future users amongst other matters.
30. Around 235 square metres (sqm) of garden plus 45sqm of balcony and decking would be available as outdoor space. As identified by the appellant, due to the

⁶ plan P-100 rev A

sloping topography, terracing would be required to provide a level and thereby more useable outdoor amenity area.

31. The outdoor amenity space would be over different levels, which would limit its practical value for meaningful family related activities such as childrens' play. However, in my judgement, it would provide a private space of sufficient size to accommodate typical garden activities such as sitting out, gardening, and drying clothes. Overall, therefore, I am not persuaded that the size or nature of the outdoor amenity area would be so detrimental to the living conditions of future occupiers to warrant withholding permission.
32. Consequently, I conclude that the proposal would provide acceptable living conditions for future occupiers with regard to outdoor amenity space. The proposal would not therefore conflict with the residential amenity requirements of Policies DM1 and DM2 of the DMP or the Framework.
33. The Council has referred to Policies CS1.1 and CS8.10 of the Core Strategy in its reason for refusal relating to this issue. However, these do not include criteria specifically addressing standards for living conditions of residents. I do not therefore find conflict with these policies with regard to this main issue.

Other Matters

34. The significance of the Grade II listed building at 56 to 62 Gillinggate which lies almost opposite the site is in part derived from its aesthetic and historical value as a fine example of the Arts and Crafts movement, showing the progression in architectural style within the area. The setting of the listed building encompasses the streetscape in which it is viewed. Given the residential nature of the proposal and the separation distance, the proposed development would not visually distract from the listed building and its setting would be preserved.

Conclusion

35. The proposal would provide acceptable living conditions for future occupiers with regard to outdoor amenity space. However, I have found that it would harm the character and appearance of the CA and I am unable to conclude that it would be possible to erect the proposed dwelling on the site without unacceptable harm being caused to highway safety. These are matters of overriding concern, and to this extent there would be conflict with the development plan when considered as a whole. Therefore, the appeal should be dismissed.

F Wilkinson

INSPECTOR