

Appeal Decision

Site visit made on 27 August 2024

by H Marriott MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/W2465/W/24/3342028

5 Belvoir Drive, Leicester LE2 8PB

- 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 & Mrs Wayne Jarvis against the decision of Leicester City Council.
 - The application Ref is 20232228.
 - The development proposed is described on the application form as 'construction of a detached dwelling at rear (1 x 2 bed) (class C3); installation of 1.8 metre high boundary fence; parking and alterations. Resubmission of application 20181833. No changes made to this application drawings'.
-

Decision

1. The appeal is allowed and planning permission is granted for the 'construction of a detached dwelling at rear (1 x 2 bed) (class C3); installation of 1.8 metre high boundary fence; parking and alterations' at 5 Belvoir Drive, Leicester LE2 8PB in accordance with the terms of the application, Ref 20232228, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have removed the words 'Resubmission of application 20181833. No changes made to this application drawings' from my decision above as they are not a description of development.

Main Issue

3. The main issue is the effect of the proposed dwelling on the character and appearance of the area.

Reasons

4. Belvoir Drive is a residential street which gently rises in gradient away from the junction with Aylestone Road. It is fronted by a mix of detached, semi-detached and terraced dwellings of varying ages and styles. Dwellings are mainly two-storey although three-storey apartments set behind a hedgerow and mature trees adjacent to the junction are also present. Dwellings on each side of the street are set behind similar sized front garden areas and

tend to be enclosed by low boundary walls and/or hedgerow forming a continuous line along the street. Dwellings are typically faced in brick or render with tile roofs and typically have long narrow rear gardens, many of which contain outbuildings. Aylestone Road to the west of the appeal site contains a variety in age and architectural style of buildings, primarily consisting of commercial units within terraces. Despite this variety along Aylestone Road, there is an overall order and consistency in development rhythm including plots size, materials and boundary features along Belvoir Drive.

5. The appeal site is a hardsurfaced area located to the rear of 5 Belvoir Drive (No 5), a two-storey detached brick and tile roof dwelling. It contains two brick buildings and a metal container used for business purposes. It is enclosed by a mix of brick wall and close-boarded fencing sharing a boundary with the main private rear garden of No 5, neighbouring rear gardens and the rear of commercial premises including a car wash and doctors surgery fronting Aylestone Road. As a result, the appeal site does not share the same characteristics of other rear gardens along Belvoir Drive. In addition, it is not widely appreciable from the street and has a neutral relationship with the area's character and appearance.
6. The dormers and half hipped roof design of the proposed dwelling would be somewhat be at odds with the more simple pitched roof form of No 5 and many other roofs visible along Belvoir Drive. However, the proposed dwelling would not front this street and it would be almost completely screened from surrounding streets by existing buildings and boundary treatments. Furthermore, its design would not be out of context having regard to the architectural variety in the area, particularly along Aylestone Road. Even though it would be higher than the existing buildings it would replace and would be visible from neighbouring gardens, the reduced footprint compared to the outbuildings it would replace combined with the nature of the surrounding uses and separation distances to boundaries, means that the proposed dwelling would sit comfortably to the rear of No 5. Overall, the proposed dwelling would suitably respect the mixed character, appearance and layout of buildings in the area.
7. Furthermore, the parties have confirmed that the appeal proposal is identical to a previously granted planning permission on the site, approved in outline in 2016 with a subsequent reserved matters consent in 2018, which has now lapsed as development was not commenced before the time limit expired (Council refs: 20160592 and 20181833). As this permission is no longer extant, I cannot afford weight to a fallback in my decision. However, Policy CS03 of the Leicester City Local Development Framework Core Strategy (2014) (CS) referred to in the Council's reason for refusal was also an adopted development plan policy at the time of the Council's previous decision. In the interests of consistent decision making, I attach moderate weight to the Council's previous decision to approve planning permission for the same development as the appeal proposal under the same development plan.
8. The Council suggests that given there is no local guide or code for this area, that the proposal would now conflict with guidance contained in the National Design Guide Planning Practice Guidance for Beautiful, Enduring and

Successful Places (2021) (NDG), referred to in Paragraph 133 of the National Planning Policy Framework (December 2023) (the Framework), which has been published since its previous decision. However, Policy CS03 of the CS is generally consistent with the requirements of the NDG and the Framework insofar as they all require well designed development. I have no substantive evidence before me to suggest that the site context has materially altered since the previous decision either. As a consequence, this does not alter my overall view that the proposed dwelling would be acceptable given the site-specific circumstances of the appeal proposal, which aligns with the Council's previous decision.

9. I therefore conclude, having particular regard to the unique circumstances of the case, that the proposed dwelling would not have a harmful effect on the character and appearance of the area. In this regard, the proposal would accord with Policy CS03 of the CS which requires development to respond positively to the surroundings and to be appropriate to the local setting and context. It would also comply with the Framework and the NDG insofar as they seek to achieve well-designed places.

Other Matters

10. The Council has submitted copies of additional policies not referred to in its decision notice. As these policies do not relate to the main issue, I have no reason to find any conflict with the development and these policies.
11. An interested party has raised concerns relating to protected species, noise and disturbance, privacy and loss of daylight. These are not matters in dispute and I have no substantive evidence before me reach a different view from the Council with regards to these issues. Furthermore, from my own observations on site, separations distances are sufficient to ensure no adverse noise and disturbance, privacy or loss of daylight impacts would result.

Conditions

12. Various conditions have been suggested by the Council, in the event that I am minded to allow the appeal. I have considered these against the tests set out in the Framework and Planning Practice Guidance. In some instances, I have made changes to wording to add precision and clarity as appropriate. In respect of pre-commencement conditions, the appellant was given notice in accordance with Regulation 2(1)(b) of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018. As no response has been received within the prescribed time period, the appellant is deemed to have given consent.
13. A condition (1) specifying timescales for the commencement of development and a condition (2) requiring the development to be carried out in accordance with the approved plans, are necessary in the interests of planning certainty and clarity. A condition (3) requiring samples of materials to be used is also necessary to ensure they reflect the character and appearance of the area. Conditions (4 and 5) are necessary to ensure safe use of the access in the interests of highway safety. A condition (6) requiring details of tree protection measures and an arboricultural method statement

is necessary to ensure the protection of trees that contribute to the quality of the urban environment.

14. While the Planning Practice Guidance advises that conditions limiting permitted development rights should only be used in exceptional circumstances, to ensure that sufficient garden space remains for future occupiers, it is necessary to remove permitted development rights for enlargement of the dwelling and the erection of any building incidental to the enjoyment of the dwellinghouse under Classes A and E. Condition (7) would not necessarily prevent such development, but would bring it under planning control.
15. A condition requiring the submission of a Sustainable Drainage System (SuDS) scheme is not considered reasonable or necessary since the disposal of surface water by SuDS is not proposed and I am not therefore aware if such a scheme is feasible on the appeal site. Additionally, Policy CS03 whilst giving priority to sustainable drainage techniques, does not explicitly require this for all development.
16. The Council's recommended condition in relation to meeting a building control 'Category 2: Accessible and adaptable dwellings M4 (2) Optional Requirement' requirement is not a specific requirement of Policies CS03 or CS06 of the CS. As conditions should be tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls, I do not consider it would be reasonable or necessary to impose such a condition.
17. The Council's delegated report acknowledges that the proposed plans show that windows serving the ground floor kitchen/diner and snug area would be obscure glazed. An additional obscure glazed window condition is not considered necessary as overlooking of neighbouring gardens from these windows is unlikely given intervening boundary treatments.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed.

H Marriott

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos A001 'Site Location Plan', A003 Rev B 'Proposed Site Plan and Proposed Fence Detail', P001 Rev C 'Proposed Ground Floor Plan', P002 Rev C 'Proposed First Floor Plan', P003 Rev B 'Proposed Front Elevation, Proposed Rear Elevation, Proposed Side Elevation(s) and Proposed Roof Plan' and P004 Rev C 'Proposed Site Sections'.

- 3) No development above ground level shall take place until details of all materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall not be occupied until the vehicle parking and turning area has been provided in accordance with drawing no A003 Rev B. Thereafter that area shall be retained for the parking and turning of vehicles only.
- 5) Notwithstanding the details submitted, the development hereby permitted shall not be occupied until the vehicular access shown on drawing no A003 Rev B, has been provided and surfaced in a hard bound material for a minimum distance of 5 metres behind the back edge of footway and drained to prevent surface water running from the site and into the highway. The access shall be retained as such thereafter.
- 6) No site clearance, preparatory work or development shall take place until a scheme for the protection of the trees on and adjacent to the site to be retained (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A (Enlargement, improvement or other alteration of a dwellinghouse) and E (Buildings etc incidental to the enjoyment of a dwellinghouse) of Part 1 of Schedule 2 to the Order shall be undertaken.

END OF SCHEDULE OF CONDITIONS Appeal Ref: APP/W2465/W/24/3342028