

Appeal Decision

Site visit made on 4 September 2024

by Hannah Guest BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2024

Appeal Ref: APP/W0340/W/23/3335930

Pound Court, Pound Street, Newbury, West Berkshire RG14 6AA

- 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 Raymond Meah against West Berkshire District Council.
 - The application Ref is 23/01967/FUL.
 - The development proposed is additional storey plus side extension.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The Council failed to determine the application within the prescribed period. Following the submission of the appeal, the Council has prepared an appeal statement that supports its reasons for opposing the development. I have had regard to this statement, in so far as it provides clarity in terms of the reasons why the Council oppose the appeal proposal. The main issues below are taken from this document.

Main Issues

3. The main issues in this appeal are the effect of the proposal on:
 - the character and appearance of the area and whether it would preserve or enhance the Newbury Town Centre Conservation Area;
 - the significance of nearby listed buildings;
 - the living conditions of neighbouring occupants, with particular regard to privacy, outlook and loss of light;
 - surface water flooding; and
 - protected species, with particular regard to bats.

Reasons

Character and appearance & conservation area

4. The appeal property is located within a rear courtyard accessed from Pound Street, close to its junction with Bartholomew Street. It is within the Newbury Town Centre Conservation Area (NTCCA). I have therefore approached this appeal in the context of Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires me to pay special attention to the desirability of preserving or enhancing the character and appearance of the NTCCA.
5. The immediate area has a tight urban grain reflective of the town centre. The buildings are predominantly terraced and set close to the highway. Most are historical and vary between 2-3 storeys. I saw on my visit that rear courtyards are a part of the existing pattern of development. The courtyards tend to contain more modern buildings. These buildings and other more recently built buildings fronting Pound Street and Bartholomew Street have a similar scale and form to the historic buildings and use similar materials. This allows the notable historic buildings to be conspicuous in the street scene.
6. From the evidence before me and my observations on site, the significance of the NTCCA, in so far as it relates to this appeal, is the architectural value of the historic buildings, and how their layout and composition relates to the evolution of the area. The appeal property is easily seen from the entrance to the courtyard on Pound Street. While it is not historic, like other courtyard buildings it has a simple form and is a similar scale to the surrounding buildings. Given its modest appearance, it makes a neutral contribution to the significance of the NTCCA.
7. Although the proposal would add significant height and bulk to the appeal property, the resulting building would be a similar scale to the buildings fronting Pound Street. Nevertheless, it's contemporary design, which includes a large amount of glass, flat roof, and white rendered finish, would be a stark contrast to the immediate surrounding buildings. This conflicts with the advice set out in the New Town Centre Design Statement (2018) that development should be sympathetic in both design and scale to nearby historic buildings. The increase in scale together with the contemporary design would make the appeal property obtrusive in the street scene, and its striking appearance would compete for attention with the historic buildings, eroding their contribution to the townscape and consequently harming the significance of the NTCCA.
8. It has been put to me by the appellant that the external appearance of the proposed development could be secured by condition. Nonetheless, Planning Practice Guidance advises that where a detail of a proposed development is unacceptable in planning terms the best course of action will often be for the applicant to revise the application. It would not be appropriate to use a condition to modify the development in a way that makes it substantially different, especially in this case where the proposal would affect designated heritage assets.

9. Notwithstanding this, the proposal would not be out of keeping with the existing pattern of development or the tight urban grain in the immediate area. Thus, it would not appear cramped or incongruous in this regard.
10. Accordingly, for the reasons above, the appeal proposal would harm the character and appearance of the area and the significance of the NTCCA. It would conflict with Policy CS 14 of the West Berkshire Core Strategy (2006-2026) Development Plan Document (2012) (Core Strategy), which seeks to ensure that new development is of a high quality and sustainable design that respects and enhances the character and appearance of the area. It would also conflict with Policy CS 19 of the Core Strategy, which seeks to conserve and where appropriate enhance heritage assets and their settings.
11. I find that the harm to the significance of the NTCCA would be less than substantial. As such Paragraph 208 of the Framework requires this harm to be weighed against the public benefits of the proposal. In this case, there would be some moderate public benefit arising from the improved functioning and accessibility of the business premises, as well as the improved energy efficiency of the building. Nonetheless, Paragraph 205 of the Framework gives great weight to the conservation of the NTCCA, irrespective of whether any harm amounts to substantial harm, total loss or less than substantial harm. The moderate benefits would therefore not outweigh the harm I have identified to the NTCCA.

Listed Buildings

12. The appeal property is also located close to several listed buildings, including Grade II Listed 62, 63, 63A, 63B, 64 Bartholomew Street and The Garden House, 2 Pound Street, which are positioned adjacent and form part of the courtyard. The setting of these listed buildings is characterised by a tight urban grain, which comprises several other buildings, including the appeal property. These buildings are a similar scale to the listed buildings and use similar materials. The significance of both these listed buildings, in so far as it relates to this appeal, derives from their architectural value and harmonious urban setting.
13. Although the external materials of the appeal property do not match its immediate neighbours, given its modest scale, its current contribution to the setting and significance of the listed buildings is neutral.
14. The appeal proposal, by virtue of its contemporary design, together with the increase in scale and bulk, would be more conspicuous in its surroundings than the listed buildings and would appear discordant with the other buildings in the urban setting. This visual intrusion would result in some harm to the setting of the listed buildings and their significance. Accordingly, the appeal proposal would conflict with Policy CS 19 of the Core Strategy.
15. I find that in this case the harm to the significance of the listed buildings would be less than substantial. Nonetheless, the moderate public benefit arising from the proposal, as set out above, would not outweigh the great weight afforded to conserving the listed buildings.

Living conditions

16. Many of the buildings surrounding the appeal property are purpose built residential blocks or comprise of residential units above ground floor commercial units.
17. Policy CS 14 of the Core Strategy seeks to ensure that all new development is of a high quality and sustainable design that makes a positive contribution to the quality of life in West Berkshire. It is supported by Part 2: Residential Development of the Quality Design – West Berkshire Supplementary Planning Document Series (2006) (SPD), which seeks to ensure that living conditions for neighbouring residential properties are not compromised by lack of daylight and unduly restricted outlook.
18. To the north of the appeal property is Bridge Court. I saw on site that there are two second floor windows serving Bridge Court, which overlook the courtyard, one in the building's west elevation and one in the south. From the evidence before me, these windows both serve bedrooms and are the only windows serving these rooms. The proposed side extension would be positioned very close to the existing window in the west elevation. The blank façade of the proposed extension would significantly change the outlook from the window and would be dominant and very oppressive. It would also substantially reduce the amount of daylight and sunlight the existing window would receive. This would conflict with the advice set out in Part 2 of the SPD and would result in harm to the living conditions of the occupants.
19. To the west of the appeal property is Boxshall Court. A two-storey residential block. There are several windows on the eastern elevation of Boxshall Court, which currently face the blank rear elevation of the appeal property. The proposed additional storey would increase the height of the rear elevation of the appeal property, expanding the amount of blank façade and reducing the amount of open sky in views from the existing windows. While the change in the outlook from the ground floor windows would not be significant, the loss of sky views from the upper windows would be more appreciable. It would also likely reduce the amount of sunlight received by these windows, especially in the morning, and may affect the levels of overall daylight. This would conflict with the advice set out in Part 2 of the SPD and would result in harm to the living conditions of the occupants.
20. To the east of the appeal property are the rear elevations of the commercial properties that front Bartholomew Street, which have residential units on the upper levels. The proposed extension would finish reasonably close to these properties and at three stories high would be a substantial addition in views from the existing rear windows. Together with the proposed additional storey to the appeal property, this would significantly change the outlook. The elevation of the proposed extension fronting these windows would be blank and would likely feel overbearing despite the separation between the buildings. This would conflict with the advice set out in Part 2 of the SPD and would result in harm to the living conditions of the occupants.
21. The proposed additional storey would also introduce additional windows directly facing the windows serving the residential units on the upper levels. However, I saw on site that this relationship of overlooking is already established. Given this, and the distance between the windows, the additional

windows would not comprise the privacy of the occupants to a degree that it would amount to any appreciable harm to the living conditions of the occupants.

22. To the south of the appeal property is Sterling House, a three-storey building comprising flats above ground floor commercial units. There are first and second-floor windows on the rear of Sterling House, which currently face the blank side elevation of the appeal property. The proposed additional storey would increase the height of this side elevation, expanding the amount of blank façade and reducing the amount of open sky in views from the existing windows. Nonetheless, the Council in their officer report explains that these windows are either secondary windows to habitable rooms or serve non-habitable rooms. Given this, although the outlook from these windows would change, the main living areas of the flats would benefit from views taken from other windows. The overall outlook from the residential units would therefore not change to a degree that it would result in any appreciable harm to the living conditions of the occupants.
23. I note that the proposed extension would be angled so that some of the windows would face in the direction of the rear elevation of Sterling House. While this would introduce a new relationship of overlooking, these views would be oblique rather than direct and would be partly blocked by the appeal property and proposed additional storey. Given this, it would not compromise the privacy of the occupants to a level that it would result in harm to their living conditions.
24. Adjacent to Sterling House is Crown House, a small two-storey residential building, which also has windows on its north elevation. I saw on site that these windows are perpendicular to the appeal property and the existing views taken from the windows are predominantly of the rear parking court, which includes an attractive medium sized tree, set close to the building. The views from these windows would not significantly change as a result of the proposed additional storey. However, given the proximity of the appeal property to these windows, the additional storey may affect the amount of sunlight and daylight received by these windows.
25. Overall, the appeal proposal would result in significant harm to the living conditions of the occupants of the second floor flat in Bridge Court with regards to outlook and light. It would also harm the living conditions of occupants of Boxshall Court and the residential units above the commercial properties on Bartholomew Street with regards to outlook. In the absence of an appropriate BRE Daylight and Sunlight Assessment, I am not satisfied that the proposal would not harm the living conditions of the occupants of Bridge Court, Crown House and Boxshall Court in terms of the daylight and sunlight received by the existing windows. Accordingly, the appeal proposal would conflict with Policy CS 14 of the Core Strategy.

Surface water flooding

26. The appeal site is located within an area identified as being at a high risk of surface water flooding. Policy CS 16 of the Core Strategy requires development within areas of flood risk from any source of flooding to demonstrate through the sequential approach that the development is

appropriate at that location, and that there are no suitable and available alternative sites at a lower flood risk.

27. To demonstrate this, Policy CS 16 of the Core Strategy requires the proposed development to be supported by a Flood Risk Assessment (FRA). Where the FRA establishes that a development must be located in an area of flood risk, it should also demonstrate that the proposed development would be safe and not increase flood risk elsewhere, reducing the risk where possible and taking into account climate change.
28. The appellant does not dispute the need for an FRA. Nonetheless, no FRA has been submitted to support the appeal proposal. The appellant contends that the FRA could be secured by condition and undertaken prior to the commencement of the development. However, this would not be appropriate as the sequential test, and exception test if needed, should be satisfied before planning permission is granted.
29. Accordingly, based on the information before me, I am not satisfied that it is necessary to locate the proposal within this area of high surface water flood risk and I cannot be certain that the development would be safe and not increase flood risk elsewhere. The appeal proposal would therefore conflict with Policy CS 16 of the Core Strategy.

Protected species

30. The Conservation of Habitats and Species Regulations 2017 imposes a duty to consider whether there is a reasonable likelihood of European Protected Species (EPS) being present and affected by the proposal. Bats are listed as an EPS under these regulations.
31. The Council's Ecologist considers the existing building on site to show potential for roosting bats due to the presence of suitable roosting features. Given this, they have advised that a bat scoping survey is required as a minimum. This survey would include a full external and internal inspection of the building to understand the potential for bats and whether bat emergence surveys need to be carried out.
32. While the appellant does not dispute the need for a bat scoping survey, no ecological information has been submitted to support the appeal proposal. The appellant contends that the required surveys could be secured by condition and undertaken prior to the commencement of the development.
33. Nevertheless, Circular 06/2005¹ advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. The need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. I am not aware of any such circumstances in this case.
34. Given the above, I find that insufficient information has been provided to demonstrate that the proposal would not have an unacceptable adverse effect on bats. The proposal would therefore conflict with Policy CS 17 of the Core

¹ Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System, dated 16 August 2005.

Strategy, which seeks to conserve and enhance biodiversity by, amongst other things, protecting habitats that support protected species. For the same reasons it would also fail to meet the statutory duty I have set out above.

Other Matters

35. The appellant refers to receiving favourable pre-application advice on the appeal proposal before the formal planning application was made. Nonetheless, Planning Practice Guidance explains that pre-application advice cannot pre-empt the democratic decision-making process or a particular outcome, in the event that a formal planning application is made.
36. While the advice can be a material consideration, I note that the advice² provided by the Council, in this case, identifies issues regarding the potential impact of the appeal proposal on heritage assets and neighbouring amenity and suggests that additional information would be required to make an informed decision on any subsequent formal planning application. As such, this advice does not lead me away from my conclusions on the main issues.
37. The footprint of the proposed extension is within an area of high archaeological potential, and I note that the Council's archaeologist had a strong preference for more information to be provided pre-determination on the likely make-up of the ground where the extension and lift are planned. This was because they considered that a conditional watching brief would not be the best way to establish whether significant heritage assets were present, and it could also result in delays to any construction. Had the scheme been otherwise acceptable then I would have sought further comments from the parties regarding this. However, given my findings above it has not been necessary to do so in this instance.

Conclusion

38. Overall, I have found that the appeal proposal would harm the character and appearance of the area. It would also result in harm to the significance of the NTCCA and setting and significance of nearby listed buildings that would not be outweighed by public benefits. In the absence of sufficient information to the contrary, there would also be potential significant harm arising from locating the proposal within an area of high flood risk, and to protected species. The appeal proposal therefore would conflict with the development plan read as a whole.
39. Having had regard to all material considerations, it has not been demonstrated that there are any of sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. The appeal is therefore dismissed.

Hannah Guest

INSPECTOR

² Planning pre-application advice, Reference: 23/00101/PREOPA, dated 21 March 2023.