



Appeal Decision

Site visit made on 22 October 2024

by B Astley-Serougi BA(Hons) LLM MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th of November 2024

Appeal Ref: APP/W3005/W/24/3345786

**Land rear of Byron Road, Byron Road, Annesley, Nottinghamshire
NG15 0AH**

- 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 Jason Taylor against the decision of Ashfield District Council.
 - The application Ref is V/2023/0219.
 - The development proposed is the construction of a detached dwelling and associated works.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs was made by Mr J Taylor against Ashfield District Council. This application is subject to a separate decision.

Preliminary Matters

3. The Ashfield Local Plan Review (ALPR) dates from 2002 but Paragraph 225 of the National Planning Policy Framework (the Framework) makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework, rather than their age. The Council refers to 'saved' policies from the ALPR in its decision notice namely: RC3, ST1, EV10 and HG5. These policies are consistent with the Framework and should not be regarded as out-of-date because they were adopted prior to the Framework's adoption. The Council has provided the relevant Direction for the saved policies and therefore I give these policies significant weight in the determination of this appeal.
4. I note that the Council's conservation officer did not object to the scheme. However, I have a statutory duty under section 72(1) of the Planning (Listed buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
5. The Council refers to the emerging Ashfield Local Plan 2023-2040 in its statement of case. The plan has been submitted for independent examination (Regulation 22). However, I have little information to suggest when the plan is likely to be adopted, if any policies need to be modified, or if there are any unresolved objections. It therefore carries very limited weight.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character and appearance of the surrounding area and whether or not it would preserve or enhance the character or appearance of the Annesley Conservation Area.
- The effect of the proposed development on the provision of open space.
- The effect of the proposed development on highway safety.

Reasons

Character and Appearance

7. The appeal site is currently part of the open space located between the rows of old colliery terraces on Byron Road and Moseley Road. The open space results in a spacious and open character to the area whilst providing communal space used by residents of the terraces. The site is located within the Annesley Conservation Area (the CA).
8. Annesley has a rich mining history and the CA covers in part the old colliery terraces (rows) as well as the open space located in between the rows. The colliery village dates to the mid-19th Century. The significance of the CA derives in part from the layout of the open spaces as well as the group value of the buildings. There is some evidence to suggest that the open space between the terraced dwellings on Moseley Road and Byron Road historically provided allotment gardens for the terraces. However, even if this was not the case, the close relationship between the colliery terraces and the open space remains of historical importance and the appeal site therefore makes a significant contribution to the historic character and appearance of the CA.
9. The appeal scheme would introduce a detached dwelling on a designated formal open space adjacent to the colliery terraces on Byron Road. The steep incline of Annesley Cutting and the position of the appeal site relative to the terrace properties on Byron Road would result in it being prominent in views across the open area which characterises this part of the CA.
10. Whilst the boundary treatment, materials of the appeal scheme and design features such as the chimney would be sympathetic to the nearby dwellings, the introduction of a building on the appeal site would disrupt the relationship between the colliery terraces and the open space. Consequently, it would appear as a conspicuous and incongruous feature in the site context and result in a significant visual intrusion. Given the importance of the existing arrangement of the colliery terraces and open spaces to the character of the CA which I have identified and the open aspect of the appeal site which makes a positive contribution to this, I find that the development would not preserve or enhance the character and appearance of the area.
11. As the proposal would fail to preserve the relationship between the colliery terraces and open space and the CA as a whole, the proposed development would run contrary to the statutory presumption under s72(1) of the Act, which carries significant importance and weight. Consequently, the significance of the CA as a designated heritage asset would be harmed, leading to conflict with

Policies ST1 and HG5 of the Ashfield Local Plan Review 2002 (ALPR) which seek to ensure development respects the local as well as Policy EV10 insofar as it seeks to safeguard the character or appearance of designated heritage assets.

12. Given the above, I conclude that the proposal would harm the character and appearance of the surrounding area and would fail to preserve or enhance the character or appearance of the CA. This would fail to satisfy the requirements of the Act and paragraph 206 of the National Planning Policy Framework.

Open Space

13. The appeal site is designated as formal open space in Policy RC3 of the ALPR. It establishes support for the loss of formal open space subject to certain criterion. The policy defines formal open space as being 'maintained for organised sport and recreation, play space for youths and children and as formally landscaped open space'. The appeal site is currently overgrown however there is a clear path which is well trodden and used by local residents that crosses it. Whilst the site does not consist of any formal recreation equipment such as goal posts, it is evident that it is used by residents as part of the wider landscaped open space and therefore can be classified as formal open space as defined in Policy RC3.
14. Whilst the appeal scheme would impact a small proportion of the wider open space between Byron Road and Moseley Road it nevertheless does not justify the resultant loss of formal open space.
15. My attention has been drawn to unused historic fence posts on site. However, there is no substantive evidence before me to suggest that the site has been enclosed. Additionally, the ownership of the site does not alter the designation of the land.
16. Moreover, the supporting text of Policy RC3 states that an exception can be made in instances where a development results in the loss of open space which does not have any formal play provision but will make a significant improvement of an existing nearby formal open space via formal sports facilities that are much needed in the locality and where general access will be allowed. However, there is no compelling evidence before me such as a legal undertaking to secure such off-site provision. Additionally, the existence of alternative formal open space provision near to the appeal site does not justify the proposed loss of open space as a result of the appeal. Policy RC3 does not require the Council to demonstrate a shortfall in open space and formal play provision. Accordingly, the proposed development conflicts with Policy RC3 of the ALPR.
17. My attention has been drawn to a previous planning permission which was granted permission in 2009¹. I do not have the full details of this permission before me and accordingly cannot be certain that it is wholly comparable to this appeal. However, the appeal scheme was for B1 light industrial units and included a S106 agreement which secured a sum of money to be paid to the Council towards public open space unlike the appeal before me.
18. The appellant sets out that there is a fallback position whereby the appeal site could be enclosed by the use of permitted development rights. Whilst there is a real prospect of the fallback being implemented if this appeal is dismissed

¹ Planning application reference: V/2009/0562

given the appellants ownership of the site, it does not justify the significant harm I have identified above.

19. In conclusion, the appeal scheme would result in the loss of formal open space and conflict with Policies ST1 and RC3 of the ALPR. Both of these policies seek, amongst other things, to ensure that development does not adversely affect the amenity of the environment and the retention of formal open space respectively.

Highway Safety

20. The appeal site is sited near the 90-degree bend on Byron Road as well as the junction of Cross Road with the Annesley Cutting. The aforementioned junction due to the alignment of the roads results in difficulty for vehicles turning onto Annesley Cutting and vice-versa. Whilst the proposed development would result in a modest increase to the volume of traffic there is no compelling evidence before me to suggest that it would result in an adverse impact on highway safety.
21. There is limited substantive evidence before me to suggest that the proximity of the appeal scheme to the bend on Byron Road would reduce the forward visibility for road users. Additionally, the County Council's Highways Officer has provided no objections to the proposed development on highways safety grounds. I find no reasons to disagree with their conclusion on this matter.
22. In conclusion, the appeal scheme would not result in harm to highway safety. The proposal complies with Policies ST1 and HG5 insofar as they seek to ensure that residential development does not adversely affect highway safety.

Other Matters

23. The application was recommended for approval by officers but refused at planning committee. The decision on whether to grant permission in this case was a matter of judgement which the committee was entitled to exercise. Whether or not the authority asked for a legal undertaking previously is not a matter which is determinative for this appeal. I have determined the case solely on its planning merits.

Planning Balance

24. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of the development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Given the scale of the development, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
25. The appellant argues that the site is derelict, fallow and consequently unkempt. They consider that the proposal would enhance the appearance of the area. However, it has not been shown that such an enhancement could not be achieved by actions which would not be harmful to the significance of the CA.

The construction activities associated with the appeal scheme would provide some economic benefit, however this would be limited by the scale of the development. This also attracts limited weight in favour of the appeal.

26. Moreover, my attention has also been drawn to a benefit in regard to the restoration of the historical hierarchy with regard to the built environment of the mining community given that a large house would once have been acquired for the colliery manager. However, this house would have been separate from the housing estate unlike the appeal site which is close to the colliery terraces and consequently forms part of the housing estate. Moreover, the appeal site also has a close historic relationship with the colliery terraces given its history as allotment space.
27. The proposal would contribute one dwelling and offer social and economic benefits associated with diversifying the market and increasing consumer choice. It would also provide economic benefits relative to the construction phase as well as future occupiers contributing to the local economy. However, the public benefits of the proposal would not be sufficient to outweigh the less than substantial harm to the significance of the designated heritage asset and the great weight that it carries.

Conclusion

28. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

B Astley-Serougi

INSPECTOR