



Appeal Decision

Site visit made on 30 September 2025

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2025

Appeal Ref: APP/G2435/W/25/3360166

49A Market Street, Ashby de la Zouch LE65 1AG

- 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 The BTA Partnership against North West Leicestershire District Council.
 - The application Ref is 24/01548/FUL.
 - The development proposed is replacement of wall in distress with standard panel fence.
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Decision

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

Preliminary Matters

2. This appeal results from the Council's failure to determine an application for planning permission within the prescribed period. As such, there is no formal decision on the application as jurisdiction over that was taken away when the appeal was lodged. Nonetheless, the Council has provided the reasons that it would have refused the application if it had been empowered to do so. A separate listed building consent application was also submitted for the same scheme (Ref: 24/01598/LBC). No appeal has been lodged in relation to the refused listed building consent application. Accordingly, my consideration in this appeal is purely in relation to the Council's failure to determine the planning application.
3. As the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issue

4. The main issue is whether the proposal would preserve a grade II listed building or its setting, known as 51 Market Street, and any features of special architectural or historic interest which it possesses and the extent to which it would preserve or enhance the character or appearance of the Ashby de la Zouch Conservation Area.

Reasons

5. The boundary wall subject of this appeal forms the boundary with the grade II listed building known as 51 Market Street. This dates to the sixteenth century with later nineteenth century alterations. It has an attractive frontage facing onto Market Street comprising of its distinctive timber framing, bowed shop front, fenestration and two slightly projecting gables. To the rear is a small courtyard and a red brick building, which backs onto the rear garden space where the boundary wall runs.

6. In so far as it relates to this appeal the special interest and significance of the listed building resides in its age, striking frontage, materials, and layout, which includes the built form creating an intimate courtyard, as well as the long narrow garden bordered by brick walling. The use of red brick to the rear in buildings, and boundary walls is also replicated with other nearby buildings to form a cohesive ensemble. In this regard, the legibility of the historic boundary treatments and its surviving historic fabric all contribute to a small degree to the overall architectural and historic special interest and significance of the listed building. I have reached this conclusion even though the existing wall subject of this appeal is not in a good structural condition and has in parts failed.
7. The appeal site is located within the Ashby de la Zouch Conservation Area (CA), which includes the town centre either side of Market Street. This part of the CA is characterised by terraced buildings, with some courtyards behind, predominantly two and three storeys in height built mostly with red brick. Although there are variations in the detailed design, this consistency in material, scale and form contribute positively to its character and appearance. In so far as it relates to this appeal, the special interest/significance of the listed building contributes positively to the character and appearance of the CA as a whole and thereby to its significance as a designated heritage asset. This includes the small contribution that the historic red brick boundary walling makes despite its location to the rear and current structural condition.
8. It is put to me that the proposed replacement fence would be an improvement from the existing walling that would be demolished. However, I disagree. I accept the appearance of the existing wall is undermined by its structural condition and I have no reason to question that it needs demolishing, indeed it has in part already failed. However, the replacement fence would introduce an overtly modern feature, which would weaken the legibility of, and fail to harmonise with, the historical boundary treatments of brick walling associated with the listed building.
9. Moreover, there is no substantive evidence before me to demonstrate that rebuilding a new wall is not feasible, even with the constraints from the tree and stumps. In this regard, it is my judgment, that there is not the appropriate level of detail before me to provide the clear and convincing justification for the changes proposed. This adds to my concerns regarding the final finish of the proposed replacement boundary treatment.
10. The proposal would be hidden from views from Market Street, and as such the attractive streetscape in this part of the CA would not be materially affected. However, given my findings above in relation to the rear of the listed building, the proposal would, in turn, harm the character and significance of the CA. Consequently, whilst the magnitude of the harm may be concluded to be minor adverse in the context of the whole CA, it would nevertheless fail to preserve it.
11. Drawing the above together, the proposal would fail to preserve the special interest of the grade II listed building, and would fail to preserve or enhance the character of the CA. As a result, the expectations of the Act have not been met, and the proposal would harm the significance of these designated heritage assets.
12. Paragraph 212 of the National Planning Policy Framework (the Framework) advises that great weight be given to the conservation of designated heritage assets (and the more important the asset, the greater the weight should be).

Paragraph 213 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.

13. With reference to paragraphs 214 and 215 of the Framework, in finding harm to the significance of the designated heritage assets, the magnitude of that harm should be assessed. Although, for the purposes of undertaking the heritage balance, the Framework does not require the decision maker to place the harm on a spectrum, I acknowledge that within each category of harm, the extent of the harm may vary.
14. In this instance, as the harm would be confined to the rear of the listed building, the harm to the overall listed building and the CA, individually and together, would be 'less than substantial' and at the lower end of the spectrum but, nevertheless, of great weight. Under such circumstances, paragraph 215 advises that this harm should be weighed against the public benefits of the proposed development.
15. The proposed development would stimulate employment, the commissioning of services, and the retention of building craft skills. However, the nature and scale of the associated public benefits that would flow from the scheme to the public at large would be minimal. Rather, the proposal would principally be of private benefit by providing privacy and security in a cost-effective boundary treatment. As such, the associated public benefits carry little weight in favour of the appeal.
16. Overall, the public benefits in favour of the proposed development do not outweigh the great weight that I attach to the harm I have found. Accordingly, the proposal would be contrary to the requirements of both the Act and the Framework, in so far as they relate to this main issue. It follows that it would also be contrary to the requirements of Policies D1 and HE1 of the Council's Local Plan (2021). These say, amongst other things, that to ensure the conservation and enhancement of North West Leicestershire's historic environment, proposals for development, including those designed to improve the environmental performance of a heritage asset, should retain buildings, settlement patterns, features and spaces, which form part of the significance of the heritage asset and its setting.

Conclusion

17. 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 and planning permission refused.

Mr R Walker

INSPECTOR