
Appeal Decision

Site visit made on 23 September 2014

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 October 2014

Appeal Ref: APP/C1625/A/14/2222402

The Lemon Field, Tetbury Street, Minchinhampton GL6 9JL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Blue Cedar Homes Ltd against the decision of Stroud District Council.
 - The application Ref.S.14/0521/FUL, dated 28 February 2014, was refused by notice dated 19 May 2014.
 - The development proposed is the erection of six retirement dwellings including means of access, parking, servicing, landscaping and associated works.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are the effect of the proposal on (1) the character and appearance of the Minchinhampton Conservation Area and, linked to that, the setting of adjacent listed buildings; and (2) the living conditions of Nos.17-35 Tetbury Street, in terms of visual impact.

Reasons

Heritage Issues

3. The starting point for considering a proposal in a conservation area is Section 72(1) of the Act¹. This stipulates that special attention is to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas in the exercise of planning functions. Where listed buildings or, as in this case, their settings, are affected by development proposals, Section 66(1) of the Act requires the decision-maker to have special regard to desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses. The Courts have held that the term preserve, as used in the Act, means to keep safe from harmful change, rather than change per se. The Court of Appeal² has held that the phrases special attention and special regard, as used in the Act, are synonymous and compel the decision-maker to attach considerable importance and weight to the desirability of avoiding harm to the character or appearance of a conservation area, or to a listed building, its setting, or any features of special architectural or historic interest it possesses.

¹ The Planning (Listed Buildings and Conservation Areas) Act 1990

² *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and Others* [2014] EWCA Civ 137

4. In a broadly similar fashion, paragraph 132 of the Framework³ tells us that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I return to the detailed application of the Framework below.
5. LP⁴ Policy BE5 only permits development in a conservation area where the siting of the development respects existing open spaces, patterns of building layout, trees, and boundary treatment and does not harm any positive contribution any of them make to the character or appearance of the conservation area; the scale, design, proportions, detailing, and materials used in the proposal are contextually sympathetic; it does not cause the loss of features of historic or characteristic value; and important views within, into, and out of the area are protected. LP Policy BE12 only permits development that preserves the setting of a listed building. LP Policy NE11 inhibits development that would damage or destroy trees protected by a TPO⁵ unless removal would be in the interests of good arboricultural practice; or the benefits of the development outweigh the amenity or landscape value of the protected tree(s).
6. The boundary of the conservation area is drawn tightly around the historic settlement boundary. The appeal site appears never to have been developed and, in the past, marked a transition between agricultural uses in the surrounding countryside, and the relatively densely developed centre of the settlement. While there is a prominent boundary wall along the Friday Street frontage of the site, which limits views into it, the site is perceived as being open and the presence of trees, especially the mature Walnut Tree near the Friday Street frontage, protected by a TPO, underlines that. There are longer distance views across the site towards Holy Trinity Church and I saw that the open nature of the site is evident in views towards it from the churchyard.
7. While their arrangement would protect the views across the site towards the church, the insertion of dwellings, garages, the access road, and garden boundaries would reduce that sense of openness and change the nature of the site from one left undeveloped, as a remnant of the historic development of the settlement, to part of its built up fabric. While the individual buildings have been carefully designed to reflect prevailing vernacular forms, the layout, which is in effect one of houses gathered around a cul-de-sac, is not reflective of the historic form of Minchinhampton where buildings of the scale of those proposed, tend to address the street frontage.
8. The nearest dwelling would be some distance to the north-west of the Walnut Tree and, as such, I do not consider that there would be any pressure from the residents thereof to remove, or reduce the crown of, the tree that would be difficult to resist. However, while I appreciate that the construction of the access road can be covered by condition, running it under the canopy of the Walnut Tree would necessitate the removal of a large bough which would have harmful implications for the appearance of the crown. More importantly, notwithstanding the proposed use of a CCS⁶, in the longer term, I would be concerned that vehicles continually passing over the root system would cause damage that may lead to the tree losing vigour, or dying prematurely.

³ The National Planning Policy Framework

⁴ The Stroud District Local Plan Adopted November 2005

⁵ Tree Preservation Order

⁶ Cellular Confinement System

9. For all those reasons, it is my conclusion that the proposal would harm both the character and the appearance of the conservation area, contrary to LP Policy BE5 and, in terms of the impact on the tree, LP Policy NE11.
10. The buildings to the south of the site fronting Tetbury Street, to the north fronting Friday Street, and No.20 Friday Street, which lies adjacent to the north-east corner of the site, are all Grade II listed buildings. The open nature of the appeal site is reflective of the historic development of the settlement. As dwellings that have been built near the historic settlement fringe, the open nature of the appeal site is an integral, and important, part of their settings. The erection of buildings on the appeal site, in an incongruous layout, would undermine that relationship, causing harm to the settings of these listed buildings, contrary to LP Policy BE12.
11. As set out, bearing in mind the strictures of the Act, a failure to preserve or enhance the character or appearance of a conservation area, or to preserve the settings of listed buildings, are matters to which I must attach considerable importance and weight.
12. In Framework terms, bearing in mind that the conservation area is wide in its compass, and the fabric of the listed buildings, where most of their significance lies, would remain intact, the harm that would be caused to the significance of the designated heritage assets affected, would be less than substantial. In those circumstances paragraph 134 of the Framework tells us that this less than substantial harm should be weighed against the public benefits of the proposal. I return to this matter below.

Living Conditions

13. One of the core principles of the Framework is to always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. LP Policy GE1 does not support development proposals that would, amongst other things, have an overbearing effect.
14. In simple terms, the Council is concerned about the visual impact of the southern terrace of dwellings proposed on the outlook from Nos.17-35 Tetbury Street and the effect this would have on the living conditions of the occupiers thereof. Clearly, the terrace would be visible from the rear of these existing dwellings. However, given the height of the terrace proposed, and the separation distance involved, notwithstanding level changes, its visual impact would not be overbearing. As such there would be no departure from LP Policy GE1, or the core principle of the Framework referred to.

Other Considerations

15. According to the appellant, the Council cannot demonstrate a 5 year supply of deliverable housing sites. The Council does not directly dispute this contention. As a consequence, the appellant says that the presumption in favour of sustainable development, enshrined in the Framework, applies.
16. Paragraph 49 of the Framework is clear that housing applications should be considered in the context of the presumption in favour of sustainable development. It continues: Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

17. Given that they are designed to protect conservation areas, the settings of listed buildings, and trees, it is difficult, in my view, to see how LP Policies BE5, BE12 and NE11 can be considered relevant policies for the supply of housing. Even if one stretched the definition, treated the policies as such, and applied paragraph 14 of the Framework, it would be wrong to approach the proposal on the basis of granting permission unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework considered as a whole. That is because, in this case, there are specific policies in the Framework which indicate that development should be restricted. Footnote 9 refers, amongst others, to policies relating to designated heritage assets. On that basis, the decision maker needs to turn to paragraph 134 which requires less than substantial harm to be weighed against the public benefits of the proposal - a different balancing exercise to that set out in paragraph 14.
18. However, in a case like this, where the decision-maker is dealing with development in a conservation area that affects the settings of listed buildings, the balancing exercise is not as simple as paragraph 134 of the Framework presents it because of the statutory requirements of the Act. The need to attach considerable importance and weight to the desirability of preserving or enhancing the character or appearance of conservation areas, and preserving the setting of listed buildings, means that the scales of the balancing exercise are heavily pre-weighted towards preservation.
19. So, while I do not doubt that bringing forward new housing, in an area that cannot demonstrate a 5-year supply of deliverable housing sites, would represent a significant benefit, that benefit, in my judgement, is nowhere near sufficient to outweigh the harm that would be caused to the significance of the designated heritage assets affected.

Final Conclusion

20. For the reasons given above I conclude that the appeal should be dismissed.

Paul Griffiths

INSPECTOR