



Appeal Decisions

Site visit made on 14 August 2012

by **David Smith BA(Hons) DMS MRTPI**

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

Decision date: 24 August 2012

Appeal A - Ref: APP/Q0505/A/12/2170247

1 Great Eastern Street, Cambridge, CB1 3AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Anglia Property Preservation Limited against Cambridge City Council.
 - The application Ref 11/0351/FUL is dated 21 March 2011.
 - The development proposed is change of use and side extension to the frontage building from an office to create 2no 1 bed flats and erection of 6 studio apartments at the rear (following demolition of existing rear buildings) together with associated infrastructure.
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Appeal B - Ref: APP/Q0505/E/12/2170251

1 Great Eastern Street, Cambridge, CB1 3AB

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for conservation area consent.
 - The appeal is made by Anglia Property Preservation Limited against Cambridge City Council.
 - The application Ref 11/0865/CAC is dated 21 July 2011.
 - The demolition proposed is of existing rear outbuildings.
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Decisions

1. The appeals are dismissed.

Main Issues

2. In both appeals the main issue is whether the proposal would preserve or enhance the character or appearance of the Central Cambridge Conservation Area. In Appeal A this includes reference to the effect on an adjoining tree. Further main issues for Appeal A are the effect on the living conditions of the occupiers of 3 and 5 Great Eastern Street with particular reference to visual impact and sunlight and also whether living conditions for future residents of the development would be satisfactory.

Reasons

Appeal A

Conservation area

3. The appeal site contains a 2-storey end-of-terrace building occupied as offices by a damp proofing and timber treatment company. At the rear are a range of outbuildings used for associated storage purposes with a yard for parking.

These would be removed and replaced by a 2-storey building containing 6 studio flats. The main building would be extended and used as 2 flats.

4. The site is within the Mill Road area of the wider Conservation Area. Great Eastern Street comprises fairly homogenous Victorian terraced housing. To the east are the commercial uses along Mill Road. This part of the Conservation Area is bounded by the railway line to the west. These are the main component parts of the locality. The significance of the heritage asset derives from them and from the strong late nineteenth century character which endures in this part of Romsey Town.
5. The side extension to No 1 and the single storey lean-to would be modest and provide a 'face' towards Mill Road. The rear building would have a modern appearance with a shallow pitched zinc roof. The vertical elements would be finished in white render and reclaimed brickwork. As such, the proposal would be distinctively different to the prevailing terraces. Nevertheless, it would have something of a 'warehouse' character reflecting the commercial history of this part of the site. Moreover, its scale would be consistent with the locality. The rear block would be readily visible from the elevated Mill Road railway bridge across a small car park and play area. The staggered south elevation would provide articulation and visual interest.
6. The proposal does not seek to emulate or mimic buildings on or surrounding the appeal site in terms of elevational treatment. The footprint, scale and mass would nevertheless be compatible with the long rows nearby. Its appearance would mark it out as a twenty first century building but by adhering to these other design principles it would not compete with or spoil the main qualities of the area. Therefore the proposal would not detract from the significance of the heritage asset as its main attributes would be unaffected.
7. Since the proposed built development would not harm the character and appearance of the area there would be no conflict with relevant parts of Policies 3/4, 3/7, 3/10 and 3/12 of the Cambridge Local Plan which, amongst other things, expect that developments should respond positively to their context in order to create successful places.
8. Just outside the site boundary is a large, early mature Tree of Heaven. It is in good condition with a useful life expectancy in excess of 40 years. The existing canopy and Root Protection Area (RPA) extend into the appeal site. The appellant's survey categorises it as of high quality and value. Indeed, the tree forms part of the greenery around the land to the south and is a prominent and important feature that acts as a pleasant foil to the dense urban form.
9. According to BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* the default position is that structures should be located outside of the RPA of trees to be retained. However, technical solutions might be available that prevent damage to the tree and the development is to be constructed using a 'no-dig' foundation. The arboricultural advice from both parties is that on this basis construction could be undertaken without material damage to the tree. Some minor pruning of overhanging branches would also be required to facilitate the development.
10. Shading is one of the factors to be taken into account to maximise the probability of successful tree retention. Based on a worse case scenario the appellant's study shows that the average daylight factor within the living areas

of each of the studios would remain above recommended levels despite the presence of the tree. These findings are not contested. However, the small patios and balconies which comprise the only available open spaces would be shaded. When foliage is not present the effect would be reduced but this is the time of year when people would be less likely to be outside.

11. BS 5837:2012 highlights other factors to be taken into account including direct damage by root growth and whipping branches and seasonal nuisance. This might include leaf fall and other debris. In addition, the relationship of buildings to large trees can cause apprehension to their occupiers resulting in pressure for their removal. In view of its age it seems reasonable to assume that this specimen is unlikely to grow significantly. However, certain trees are of such importance and sensitivity as to be major constraints on development or to justify its substantial modification.
12. In this case future occupiers of Plots 2-4 and 6-8 would clearly be aware of the tree before deciding to live in them. However, it would not be unheard of for initial enthusiasm about its attractiveness to be replaced by misgivings. Whilst maintenance issues associated with leaf fall could be carried out communally this does not alter the necessity for it. The appellant argues that future requests for works to or removal of the tree are speculative and that the Council would have control in any event. However, the BS warns that care should be taken to avoid misplaced tree retention as attempts to retain unsuitable trees can result in post-completion demands for their removal.
13. There is nothing to say that trees should not be retained within any particular distance of a structure. However, in this case a tree of considerable magnitude would be in very close proximity to the sole fenestration of these single aspect units. There are particular concerns about the interruption of light to the external spaces and the nuisance which would be caused by leaves and other debris. Furthermore, the sheer size of the tree would be intimidating and the juxtaposition with the residential accommodation proposed would be poor.
14. How various parties might act in the future can only be predicted. Fears about pressure to cut the tree back or down may not materialise or the Council might turn away any such requests. However, viewed objectively it seems likely that there would be demands for major works to the tree that would be difficult to resist. The key point is that the importance of the tree within the local scene means that this is a risk not worth taking. Overall the BS 5837:2012 objective of achieving a harmonious relationship between trees and structures that can be sustained in the long term would not be met.
15. Major disfiguring surgery or the removal of the tree as a result of the proposal would be significantly detrimental to the character and appearance of the area. One of the core planning principles of the National Planning Policy Framework of conserving and enhancing the natural environment would therefore be offended if the development were to go ahead. Furthermore, it would be contrary to the thrust of Policy 4/4 of the Local Plan as well as Policies 3/4 and 3/10 which refer to protecting trees and to features of natural character.
16. By providing a successful contrast and also reflecting the context the design of the new building and the alterations to No 1 would accord with criterion b) of Local Plan Policy 4/11. However, there would be conflict with criterion a) which seeks to retain trees which contribute positively to the character or appearance

of the area. Overall, therefore, the proposal would fail to preserve or enhance the character and appearance of the Conservation Area.

Living conditions

17. The appellant's studies show that the existing outbuildings create significant shadowing of adjoining gardens, especially Nos 3 and 5. Owing to the similar height, the difference between the current and proposed situations would be imperceptible. Whilst local residents doubt the accuracy of this finding the exercise is not questioned by the Council and is consistent with what I was able to observe.
18. There is already a long run of built development enclosing one side of the garden at No 5. The proposal would perpetuate this and would be higher in some places and lower in others along the boundary. Although the overall bulk of the building would increase the consequences of this would be mitigated by the distance from the rear façade and as parts of it would be off-set from the boundary. Overall the environment for the occupiers of 5 Great Eastern Street would not change significantly for the worse.
19. The only amenity space associated with No 3 is a very small courtyard. The section at the northern-eastern end of the proposed 2-storey element has been deliberately set back to create a 'cut away'. However, the remainder of that elevation would be closer to the yard and of greater width than the existing outbuilding. Whilst it is already hemmed in the paucity of the yard in terms of size makes it all the more important that the outlook should not be reduced. In view of this the proposal would have a dominating effect and thereby harm the living conditions of the occupiers. As there would be a significant adverse impact on the amenities of the neighbouring property at 3 Great Eastern Street through an overbearing sense of enclosure the proposal would not accord with Policy 3/10 of the Local Plan.
20. Each of the studio flats would have external amenity space although none would be available exclusively to those living in the flats within the frontage building. The Council has no standards in this regard and does not contest the assertion that there are "countless" examples of developments with similar or less provision. The accommodation is not aimed at families and the areas provided would be south-facing, give surveillance over the neighbouring car park and would be away from the railway line.
21. In terms of its size and type the amenity spaces provided would be apt for the likely occupiers of flats of this kind. However, as previously discussed, the adjoining tree and the implications arising from it would seriously affect their usability and enjoyment. The Framework seeks to secure a good standard of amenity for future occupants but living conditions for residents of the development would not be satisfactory in this respect.

Other Matters

22. The appellant refers to numerous paragraphs within the Framework. This has at its heart a presumption in favour of sustainable development. To achieve this economic, social and environmental gains should be sought jointly and simultaneously through the planning system. Good design is a key aspect of this which would be met and, in addition, this is an accessible urban location comprising brownfield land. The proposal would increase the supply of

housing. It would also facilitate the re-location of the existing business to more suitable premises which would enable it to move forward.

23. However, the objections identified would transgress some of the core planning principles. Paragraph 134 of the Framework and Local Plan Policy 4/4 call for a balancing exercise to be undertaken. In this respect the less than substantial harm to the significance of a designated heritage asset and the implications for the current and future amenity value of the Tree of Heaven are not outweighed by the public benefits of the proposal. Indeed, the advantages are insufficient to override the drawbacks of the scheme as a whole not least because there is no indication that this is the only way that the site could be developed.
24. It is also suggested that the cessation of the commercial use would be beneficial but as there is nothing to suggest that it is problematic at the moment this outcome is of little weight.
25. In response to one of the purported reasons for refusal a unilateral undertaking has been submitted which provides for financial contributions to be made towards various facilities and infrastructure. Whilst there is insufficient capacity to meet demand for lifelong learning there is no clear evidence that payments are necessary to make the development acceptable in all other respects. Rather it appears that new residential development is required to make contributions in a 'blanket' fashion. However, given that the proposal is unacceptable there is no need to formally apply the tests in the Community Infrastructure Levy Regulations.

Appeal B

26. The outbuildings are of limited historical interest and are poorly constructed. In principle their demolition is acceptable. However, their presence contributes positively to the character of the Conservation Area. In these circumstances, paragraph 4.40 of the Local Plan indicates that the tests for the demolition of a listed building in Policy 4/10 will be applied. There is no specific evidence that the buildings are structurally unsound or that no use of them is feasible. Wider public benefits would accrue from re-development but this is contingent upon a suitable scheme. In the absence of one consent should not be granted.

Conclusions

27. The proposal in Appeal A would result in incompatibility between a valuable tree and the studio flats. In turn, this would either fail to preserve or enhance the character and appearance of the Conservation Area or lead to unacceptable living conditions for future occupiers. There would also be a significant adverse impact on those at 3 Great Eastern Street. Collectively the other material considerations, including the Framework, do not outweigh the conflict with the development plan. Because Appeal A is unacceptable Appeal B should also fail as explained. So for the reasons given the appeals should both be dismissed.

David Smith

INSPECTOR