

---

## Appeal Decisions

Site visit made on 11 August 2015

**by Elaine Benson BA (Hons) DipTP MRTPI**

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

**Decision date: 18 September 2015**

---

### **Appeal A Ref: APP/L3245/W/15/3004246**

#### **The Habit, 30 East Castle Street, Bridgnorth, Shropshire, WV16 4AN**

- 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 Mr Gordon Rickards, G C Rickards (Investments) Ltd against the decision of Shropshire Council.
  - The application Ref 13/04956/FUL, dated 10 December 2013, was refused by notice dated 19 August 2014.
  - The development proposed is to construct a single dwelling fronting onto Bank Street on land at the rear of The Habit.
- 

### **Appeal B Ref: APP/L3245/W/15/3004251**

#### **The Habit, 30 East Castle Street, Bridgnorth, Shropshire, WV16 4AN**

- 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 Mr Gordon Rickards, G C Rickards (Investments) Ltd against the decision of Shropshire Council.
  - The application Ref 14/04464/FUL, dated 2 October 2014, was refused by notice dated 13 January 2015.
  - The development proposed is to construct a single dwelling fronting onto Bank Street on land to the rear of The Habit.
- 

### **Preliminary Matters**

1. I have considered each of the appeals on their individual merits. However, to avoid duplication I have dealt with the 2 schemes together, except where otherwise indicated.
2. A Unilateral Undertaking pursuant to Section 106 of the above Act was provided with the appeals in respect of the provision of a financial contribution towards affordable housing. This is addressed further below.
3. The appellant made applications for a partial award of costs in respect of both appeals. However, these applications were withdrawn following the High Court judgement in *West Berkshire District Council and Reading Borough Council v Secretary of State for Communities and Local Government* [2015] EWHC 2222 (Admin) (31 July 2015). The judgement was followed by a declaration Order issued on 4 August 2015 confirming that the Written Ministerial Statement of 28 November 2014 and subsequent alterations to the National Planning Practice Guidance (paragraphs 012-023), which introduced a threshold beneath

which affordable housing contributions should not be sought, must not be treated as a material consideration in development management decisions.

## **Decisions**

4. The appeals are dismissed.

## **Main Issues**

5. The main issue in both appeals is the effect of the proposed development on the living conditions of adjoining occupiers with particular regard to loss of light. As the appeal site is located within the Bridgnorth Conservation Area, there is also the statutory duty to consider whether the proposed developments would preserve or enhance the character or appearance of the conservation area.

## **Reasons**

6. The appeal site is land associated with "The Habit" public house in Bridgnorth town centre. Planning permission has been granted for the conversion of the vacant public house into 2 dwellings. Its rear boundary wall adjoins the corner of Bank Street and Castle Terrace and the appeal site is some 2m higher than the level of the adjacent roads. The proposals include the removal of the most recent section of this retaining wall to accommodate the proposed dwellings.
7. There is no objection in principle to residential development of the appeal site. Each proposal would constitute the development of unused land within the town development boundary and would provide a dwelling which would make a small contribution to the District's supply of housing. Furthermore, subject to conditions, the Council raises no objections to the designs of the proposed dwellings which differ principally in respect of their heights. This appeal decision therefore focuses on the reasons for refusing both proposals; considering whether the height, bulk and position of the buildings would result in a loss of light to the existing properties on Castle Terrace and Bank Street such as to unacceptably harm the living conditions of their occupiers. Such development would be contrary to Shropshire Core Strategy (CS) Policy CS6 in respect of its intention to safeguard residential and local amenities.
8. As set out above there is a significant difference in levels between the appeal site and Castle Terrace and Bank Street. Therefore, in respect of Appeal A the proposed house would appear as a 2 storey structure from within the appeal site and as a 3 storey house from Bank Street. The eaves height would be slightly below the eaves of the adjacent 5 Bank Street (No 5). In Appeal B the ridge height would be reduced by 1.7 m and the proposed house would appear as a two-storey building from Bank Street and single-storey at the rear.
9. In Appeal A, despite the gap between the side of No 5 and the proposed dwelling and the proposed setback from Bank Street, the proposed development would prevent sufficient light reaching the upper level bedroom window in the gable end of No 5. In itself this is sufficient to dismiss Appeal A. In Appeal B the lower height of the proposed dwelling would overcome these concerns.
10. Following concerns expressed by the Planning Committee about the potential for loss of light and the resulting impact on residential amenities, the appellant provided an 'Ecotec' solar access analysis report to demonstrate the effect of

the Appeal A dwelling on the houses facing the appeal site. The residents of those properties also commissioned a Daylight Factor report which was based on 'Relux' software. Further updated reports were submitted by the same parties in respect of Appeal B.

11. The appellant disputes the weight that can be given to the objectors' reports, stating amongst other things that it focuses on a single day whereas his report addresses light conditions throughout the year. He further states that it would be inappropriate to rely upon a calculation-based approach. The validity of the data submitted on behalf of neighbouring occupiers and the responses of their consultants to the appellant's comments have been considered. I have taken all of the professionally prepared evidence into account in my decision as the approaches taken are two of a number of methods which could be used to carry out the required assessments. I have also had regard to the detailed summary of the reports and their conclusions which are set out in the Council's committee reports, noting that the appellant commends them. There is therefore no need to repeat this evidence in my decision.
12. In summary, the appellant's reports indicate that there would be reductions in the hours of sunlight experienced per year, mainly in the morning on Bank Street and in the afternoon on Castle Terrace. They note that the impact of the proposals would be greater on the Bank Street properties because they would face on to the proposed dwellings, their orientation and because of the limited distances between them. The objectors' report reaches similar conclusions.
13. In respect of Appeal B, the evidence indicates that the reduced height of the proposed dwelling would lead to a less adverse impact on the daylighting levels reaching the affected properties on Bank Street and Castle Terrace. However, this harm would not be removed altogether in respect of many of the surrounding properties. Furthermore, as both the appellant and the Council indicate, this issue fundamentally turns on planning judgement which can be best made by an assessment of the appeal proposals at the appeal site.
14. Roads are narrow in the old part of the town and the majority of buildings stand close to the edge of the road. As a result, some houses are overshadowed by the buildings opposite. This is the case around the appeal site. Furthermore, the amount of light reaching the ground floor windows of the houses facing the appeal site is limited by the appeal site's boundary wall which is around 4-4.3 m high. However, according to the evidence the appeal proposals would also reduce the amount of light that would reach the bedroom windows.
15. No 6 Bank Street (No 6) faces the appeal site's boundary wall which is lower than the buildings along the remainder of the road. The amenities of its residents are therefore different to those of their neighbours and the other properties further along Bank Street which face onto taller buildings. Under these circumstances the impact of the appeal proposals on No 6 would be even more noticeable and harmful to its residents.
16. Due to the narrowness of Bank Street and Castle Terrace, the existing light amenity of the properties within them is generally poor. The low light levels would be reduced further by both appeal proposals. In my view a reduction in daylight to additional areas of an already poorly lit house would have a significantly harmful effect on the living conditions and wellbeing of their occupiers.

17. It is my judgement that the diminished daylighting levels, which the appellant accepts would result from both appeal schemes, is unacceptable where new development is being brought into an existing predominantly residential environment. It appears to me that an alternative form of development could be designed for the appeal site which would not reduce the hours of sunlight reaching existing properties. I note that the proposed dwellings would be set back from the boundary wall by about 1.2m. However, due to the greater height of the houses when compared to this wall, the beneficial impact of this setback would be minimal.
18. Overall, I share the view of the Council's Planning Committee, reached following a site visit, that both schemes would harm the living conditions of neighbouring occupiers and would conflict with CS Policy CS6. I conclude that the adverse effect of both proposals would be so severe as to warrant dismissing both appeals.
19. Whilst officers recommended approval of the schemes, they were 'on balance' recommendations where it had already been concluded that the developments shown in both appeals would have an impact on neighbouring properties and that this would be 'significant' in respect of the properties on the north side of Bank Street. It is my view that in Appeal A, when balancing the material considerations in favour of the conservation aspects of the scheme, insufficient weight was given to the adverse effects on neighbouring occupiers.

#### *Conservation Area*

20. I agree with the Council's assessment that the proposed developments shown in both appeals would preserve the important historic elements of the boundary wall, would reflect the character of nearby buildings in the conservation area and would relate well to the street pattern. I conclude therefore that the character and appearance of the conservation area would be preserved and that the significance of the heritage asset would not be harmed. The schemes therefore comply with those aspects of CS Policies CS6 and CS17 which seek to protect, restore, conserve and enhance the historic environment. These objectives are similar to the statutory obligation noted above and the heritage requirements of the Framework.
21. I am satisfied by what I saw at the site visit, including the variety of building mass, architectural styles and storey heights along Bank Street and Castle Terrace, that there could be other forms of development which would preserve residential amenities and would be acceptable on conservation grounds.

#### *Other Matters*

22. The appellant submitted a Unilateral Undertaking (Undertaking) pursuant to Section 106 of the above Act in respect of both appeals. It would secure contributions towards the off-site provision of local needs affordable housing to comply with the requirements of CS Policy CS11 and the Council's *Type and Affordability of Housing* Supplementary Planning Document.
23. As detailed above, the Undertaking is no longer a significant contested issue and on the evidence before me I find that the requirements are necessary to make the proposals acceptable in accordance with adopted development plan policy, are related directly to the proposed developments and are fairly related in scale and kind. As such the Undertaking would accord with the provisions of

Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. Nonetheless, when weighed in the overall planning balance; the positive benefits of the Undertaking in respect of contributing towards affordable housing do not outweigh the harms to neighbouring living conditions that I have identified.

24. In addition to those matters addressed above, I note the concerns of local residents and businesses relating to parking, drainage and the use of the public house. However no technical objections were raised to these matters and they did not form part of the reasons for refusing the appeal applications. In respect of concerns about the removal of a tree from the appeal site, it appears that this was a tree growing out of and causing damage to a wall. I understand that it was removed with the consent of the Council. I am satisfied that all of the objections raised are fully addressed by the appeal proposals. I have also noted the letters of support for the 2 proposals, but they do not outweigh the concerns I have identified. Whether or not there is a 'right to light' is a civil matter which cannot be taken into account in this appeal.

### *Conclusion*

25. The harm to the living conditions of neighbouring occupiers outweighs the benefits of the appeal proposals, which include the development of unused land within the town development boundary, the provision of an additional dwelling in a form that would reflect the built character of its surroundings and contributions towards off-site affordable housing. There appears to be nothing to preclude an alternative form of development being designed for this site which would achieve these benefits without harming existing residential amenities.
26. For all of the foregoing reasons the appeals are dismissed.

*Elaine Benson*

INSPECTOR