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# Appeal Decision

Site visit made on 8 October 2015

**by Sarah Colebourne MA, MRTPI**

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

**Decision date: 21/10/2015**

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**Appeal Ref: APP/N1025/W/15/3030433**

**9 Dukes Place, Ilkeston, Derbyshire, DE7 8QH**

- 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 and Mrs A Seymour against the decision of Erewash Borough Council.
  - The application, Ref ERE/0714/0052, dated 24 July 2014, was refused by notice dated 20 February 2015.
  - The development proposed is the new build of a set of semi-detached houses.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. Although the description of the development in both the application and the decision does not include the demolition of the existing building, it is clear from the plans that this forms part of the proposed development and as one of the Council's reasons for refusal relates to this it was considered as part of the proposal by the Council, notwithstanding the subsequent decision that prior approval is not required for the demolition. I have therefore considered the appeal on the basis that it includes the proposed demolition.

## Main Issues

3. The main issues in this case are the effect of the proposed development on:-
  - the significance of the locally listed building and the character and appearance of the area;
  - land stability.

## Reasons

*The significance of the locally listed building and the character of the area*

4. The objectives of Policy 11 of the Council's Core Strategy (CS) accord broadly with paragraph 135 in the National Planning Policy Framework (the Framework) in seeking to balance the significance of a non-designated heritage asset against the scale of any harm or loss.
5. The appeal site contains a locally listed building, a former squatter's cottage, built in the early nineteenth century. It has a historic association with the early

industrial revolution in Ilkeston when squatters' cottages were erected along the edges of Ilkeston Common and is one of only two such surviving cottages in the area. The appellants have not provided an assessment of its historic significance as required in paragraph 128 of the Framework.

6. I saw at my visit that this small building has been subject to many alterations over the years, including external rendering, the roof covering, windows and a porch on the front elevation. However, its basic structure remains evident and despite the clear need for much work to repair and restore its condition it seemed to me that this could be achieved, albeit at some cost.
7. The appellants consider that the size and condition of the building and the costs that would be necessary to meet Building Regulations would make its restoration unviable. The submitted structural report indicates that substantial works would be necessary although the Council's officer's report queried the cost and necessity of some of the estimated £60,000 worth of repairs. It considers that despite not having sold at auction with a reserve price of £70,000, as long as the property has a value in excess of zero, it is not in 'conservation deficit' and could be restored. From what I have seen and heard it seems that the costs of restoration would be considerable nonetheless and there would be little incentive for the owners to sell if the reserve price was too low. I am not persuaded that a viable use could be secured for the property.
8. Dukes Place is a residential road, comprising mostly 1930's and 1960's semi-detached properties. The appeal dwelling is tucked into the bottom corner of the cul-de-sac and as a result, is not clearly seen until reaching the end of the road. The setting of the building has already been significantly compromised by the proximity, scale and design of the surrounding dwellings which dominate it in the street scene. Despite its age and rarity, it appears incongruous in the street scene and its significance is greatly reduced by its setting.
9. As a non-designated heritage asset, the Council could have placed an Article 4 Direction on the building that would require permission for demolition but it has not done so. Furthermore, I have noted that following the Council's decision on this application, it issued a decision that prior approval of the proposed demolition is not required under the Town and Country Planning General Development Order Schedule 2, part 31. As the appellants could demolish the building without further permission, it would be unreasonable to dismiss the appeal for this reason.
10. The Council has not raised any objection to the proposed new semi-detached dwellings and these would fit more appropriately in the context of this suburban street and would enhance the character and appearance of the area. This would provide some public benefit which adds weight to the proposal.
11. Although the additional dwelling that would be provided by the development is only a minor public benefit it nevertheless adds a small amount of additional weight in favour of the development.
12. For these reasons, I conclude that the loss of the building would clearly diminish its significance but as this has already been much reduced by its setting, the limited scale of that harm would be outweighed by the benefits of the proposed new development. It would accord, therefore, with accord with CS policy 11 and the Framework.

### *Land stability*

13. Paragraphs 120 and 121 in the Framework seek to ensure that development takes account of ground conditions and land instability, including from former activities such as mining and that adequate site investigation information is presented. The appeal site falls within the Coal Authority's defined Development High Risk Area. The Coal Authority has objected to the proposed development and considers that the appellant's Coal Authority Mining Report confirms that within the application site and surrounding area there are coal mining features and hazards which need to be considered, specifically likely historic unrecorded underground coal mining at shallow depth. The Planning Practice Guidance states that in defined Development High Risk Areas applicants should normally submit a coal mining assessment as part of their application and advises on the content of these. The appellants have not done so and the Coal Authority has said that the information provided, which also includes the appellants' structural report and schedule of works, does not consider or adequately address issues of any coal mining legacy on the site.
14. For these reasons, I cannot be satisfied that the proposed development would be appropriate for its location and safe in terms of land stability. It would be contrary to national policy in the Framework.

### **Conclusion**

15. For the reasons stated above, taking into account all other matters raised and notwithstanding my findings regarding the significance of the building and the character and appearance of the area, my findings regarding land stability are significant and overriding. The proposed development would conflict with national policy in the Framework. The appeal should be dismissed.

*Sarah Colebourne*

Inspector