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TOWN AND COUNTRY PLANNING ACT 1990

In pursuance of the powers vested in the Amber Valley Borough Council under the above Act and Orders and taking into account Government policy and the saved policies of the Adopted Amber Valley Borough Local Plan 2006, and with reference to your application (**Office Code: AVA/2021/0545**) which was valid on the 18 May 2021 for permission for **Proposed Building Plot for a single detached 4 bedroom house with Garage at The Smithy Mercaston Lane Kedleston**

In the manner described in the application and shown on the accompanying plan(s) and drawing(s) **NOTICE IS HEREBY GIVEN** that permission for the proposed development is **REFUSED for the following reasons:**

Conditions/Reasons

1. The proposed development would be harmful to the defined rural setting of the Grade I Registered Park and Garden to Kedleston Hall by virtue of the loss of an attractive open gap, introducing a modern and harmful intervention resulting in a tighter group of housing in a sensitive and distinctly rural location just beyond the boundary of the Registered Park and Garden that would adversely affect how the designated asset is experienced. The development is therefore contrary to Policy EN33 of the Adopted Amber Valley Borough Local Plan 2006, which states that within the defined setting of the Historic Park and Garden at Kedleston Hall, as shown on the Proposals Map, planning permission will not be granted for any development proposals that would have an adverse impact on the landscape setting, including views into and out of, the Historic Park and Garden; and contrary to Paragraphs 197 and 200 of the National Planning Policy Framework as the development fails to sustain or enhance the significance of the heritage asset and does not evidence clear or convincing justification for the loss of significance to a designated heritage asset of national importance. The harm to the setting of the designated heritage asset would be 'less than substantial' with the public benefits not outweighing the harm caused in the planning balance considered in accordance with Paragraph 202 of the National Planning Policy Framework.

2. The proposed development would be harmful to the setting of the Grade II Listed The Smithy by the loss of its garden curtilage, the absence of development on which forms part of its special interest and setting. The proposed development would challenge the significance and dominance of the Listed Building by the intervention of a large and modern unrelated dwelling. This is contrary to Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special regard must be had to the desirability of preserving the setting of a Listed Building or any features of special architectural or historic interest which it possesses; contrary to Policy EN24 of the Adopted Amber Valley Borough Local Plan 2006, which requires that new buildings or structures within the setting of Listed Buildings will only be permitted where the proposals contribute to the preservation of the Listed Building and its setting, having regard to the elements which make up its special interest, including the character, appearance, scale and its original function; and contrary to Paragraphs 197 and 200 of the National Planning Policy Framework as the development fails to sustain or enhance the significance of the heritage asset and does not evidence clear or convincing justification for the loss of significance to the asset. The harm to the setting of the designated heritage asset would be 'less than substantial' with the public benefits not outweighing the harm caused in the planning balance considered in accordance with Paragraph 202 of the National Planning Policy Framework.

3. The development would be harmful to the character and appearance of Kedleston Conservation Area by virtue of a loss of open gap that does not accord with the established built character of the area, which is defined by attractive open spaces between the buildings and a low density of housing. The development would therefore result in the loss of an attractive open space which would disturb the positive open and bucolic relationship between this small group of properties and which would not follow the established pattern of development historically. This is contrary to Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which imposes a statutory duty on Local Planning Authority's to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas; contrary to Policy EN27 of the Adopted Amber Valley Borough Local Plan 2006, which states that planning permission will only be granted for development proposals within and adjacent to Conservation Areas, as shown on the Proposals Map, if they would contribute to the preservation or enhancement of the Conservation Area; contrary to Policy EN7 of the Adopted Amber Valley Borough Local Plan 2006 as due to the application site location and historic context of the site, the development could not respect the scale, layout, design and detailing of the local building pattern; contrary to Policies LS3 and H12 of the Adopted Amber Valley Borough Local Plan 2006 as the development would not conserve or enhance the quality and local distinctiveness of the natural and built historic environment, or successfully respect the character of the locality in terms of the scale and nature of the development; and contrary to Paragraphs 197 and 200 of the National Planning Policy Framework as the development fails to sustain or enhance the significance of the heritage asset and does not evidence clear or convincing justification for the loss of significance to the asset. The harm to character and appearance of the designated heritage asset would be 'less than substantial' with the public benefits not outweighing the harm caused in the planning balance considered in accordance with Paragraph 202 of the National Planning Policy Framework.

4. The proposal does not constitute sustainable development for the purposes of paragraphs 8 (c) and 11 (d, i) of the National Planning Policy Framework, since the application of policies in the Framework that protect areas or assets of particular importance, provide a clear reason for refusing the development proposed by virtue of the environmental harm that would arise to the setting of the Grade I Registered Park and Garden of Kedleston Hall, to the setting of the Grade II Listed the Smithy and to the character and appearance of Kedleston Conservation Area.

Notes

Attention is drawn to the attached notes:

In detail:

The processing of this planning application has been undertaken in accordance with the requirements of the National Planning Policy Framework. Dialogue between the applicant and Local Planning Authority has been undertaken to try and address the heritage issues associated with the proposal. This has included allowing the applicant to submit rebuttal statements to the heritage concerns raised, submission of amended plans and allowing a delay in the determination of the application to give the applicant the opportunity to address the concerns, however, the fundamental in principle issues have failed to be resolved.

Date : 10 January 2022

Signed



Julian Townsend
Executive Director (Operations)

NOTES

1. **If the applicant is aggrieved by the decision of the Local Planning Authority to refuse planning permission or approval for the proposed development or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment in accordance with Section 78/79 of the Town and Country Planning Act 1990, within six months of the date of this notice. The Secretary of State has power to allow a longer period for the giving of a notice but will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission of the proposed development could not have been granted by the Local Planning Authority or could not have been so granted otherwise that subject to the conditions imposed on them, having regard to the statutory requirements, to the provision of the development order, and to any directions given under the order.**
2. **If permission to develop land is refused or granted subject to conditions, whether by the Local Planning Authority or by the Secretary of State for the Environment, and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Council of the County/District in which the land is situated, a purchase notice requiring that council to purchase his interests in the land in accordance with the provisions of Section 180 of the Town and Country Planning Act 1990.**
3. **In certain circumstances a claim may be made against the Local Planning Authority for compensation where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Sections 137 and 138 of the Town and Country Planning Act 1990.**
4. **This permission relates to planning controls only. Any other statutory consent necessary including submission under the building regulations must be obtained from the appropriate Authority.**
5. **If it is intended to give notice of appeal in accordance with Paragraph 1 above, this should be done on the appropriate form obtainable from:-**

   The Planning Inspectorate
   3/23 Hawk Wing, Temple Quay House,
   2 The Square
   Temple Quay
   Bristol
   BS1 6PN
   (Tel. No. 0117 372 8000)
   www.planning-inspectorate.gov.uk

6. **If the condition of consent or reasons for refusal make reference to a Division of the Department, the appellant may, if he so wishes, require the attendance of a representative from the Department by notification to the Local Planning Authority. Such a representative would not be liable to cross-examination on questions of departmental policy, but only on matters of fact and expert opinion in relation to the appeal site.**
7. **Where a vehicle is habitually drive across a grass verge or kerbed footway to and from premises adjoining a highway, the occupier of the premises may after being given due notice by the appropriate authority, be required to pay the cost of construction of a carriage crossing or the strengthening of a footway, as the authority considers it necessary, or may be required to comply with conditions imposed by the authority.**
8. **In the case of building or premises to which the public are to be admitted whether on payment or otherwise, attention is drawn to Sections 4 and 7 of the Chronically Sick and Disabled Persons Act 1970 and the associated Code of Practice (BS5810:1979). In the case of premises to which the Offices, Shops and Railway Premises Act 1963 or the Factories Act 1962 applies, attention is drawn to Sections 7 and 8A of the Chronically Sick and Disabled Persons Act and to the same code of practice. In the case of Educational Buildings, attention is drawn to Sections 7 and 8 of the Chronically Sick and Disabled Persons Act 1978 and to the Design Note 18 "Access for the Physically Disabled Educational Buildings".**
9. **If the development site is crossed by an electric line or is within 15 metres (50ft) of the nearest part of a line (measure horizontally along the ground) or if there is reason to believe that it may be crossed by an underground electric cable, the applicant should contact the Electricity Board to ascertain if and what special safety precautions are necessary.**
10. **The grant of planning permission does not entitle developers to obstruct a public right of way. Development on so far as it affects a right of way, should not be started, and the right of way should be kept open for public use, until the necessary order under Section 247 and 257 of the Town and Country Planning Act 1990 for the diversion of extinguishment of the right of way has been made and confirmed.**