
Appeal Decision

Site visit made on 8 August 2016

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 26 August 2016

Appeal Ref: APP/J3015/W/16/3149405

123 Brookhill Street, Stapleford, Nottinghamshire NG9 7GU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of outline planning permission subject to conditions.
 - The appeal is made by Mrs Mary Cox against the decision of Broxtowe Borough Council.
 - The application Ref 15/00867/OUT, dated 15 December 2015, was approved on 18 March 2016 and planning permission was granted subject to conditions.
 - The development permitted is described as *"to construct one dwelling with some reserved matters reserved (revised scheme)"*.
 - The conditions in dispute are No's 6 and 7 which state that:
 - "6. The development hereby permitted, and the details required under condition 4, shall relate only to a single storey dwelling with no window openings or habitable rooms above ground floor level."*
 - "7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no new extensions or roof alterations shall be permitted to the dwelling."*
 - The reasons given for the conditions are:
 - "6. In order to ensure that the development is of a suitable scale for the locality."*
 - "7. In the interests of privacy and amenity for nearby residents and in accordance with the aims of Policy H7 of the Broxtowe Local Plan (2004)."*
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Decision

1. The appeal is allowed and the outline planning permission Ref 15/00867/OUT to construct one dwelling with some reserved matters reserved (revised scheme), granted on 18 March 2016 by Broxtowe Borough Council, is varied by deleting condition No 7, and deleting condition No 6 and substituting for it the following condition:

6) The development hereby permitted, and the details required under condition 4, shall relate only to a single storey dwelling.

Reason: In order to ensure that the development is of a suitable scale for the locality.

Procedural Matters

2. Condition No 7 refers to the Town and Country Planning (General Permitted Development) Order 1995 which was replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). I have determined the appeal with regard to the GPDO 2015.
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Application for costs

1. An application for costs was made by Mrs Mary Cox against Broxtowe Borough Council. This application is the subject of a separate Decision.

Main Issues

2. The main issues in this case are the effect that removing conditions 6 and 7 would have upon:-
 - i) the living conditions of occupiers of nearby dwellings, and
 - ii) the character and appearance of the locality.

Reasons

3. The national Planning Practice Guidance (PPG) advises that whether it is appropriate for the Local Planning Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework (Framework), including satisfying the six tests for conditions. The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made. When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission¹. Front loading and positive dialogue between the local planning authority and the applicant can also result in planning permission being granted with fewer conditions attached².
4. The PPG also includes advice that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn. Blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity³.
5. Broxtowe Borough Local Plan (2004) (Local Plan) Policy H7 requires, amongst other things, that development should not result in an undesirable change in the character or appearance of an area and that development does not have an unacceptable effect of the privacy and amenity of occupiers of nearby properties. Although somewhat dated these aims are consistent with advice in the Framework. Paragraph 17 sets out core planning principles that planning should always seek to secure. These include a high quality design and a good standard of amenity for all existing and future occupants of land and buildings, and to take account of the different roles and character of different areas.
6. I now give consideration, separately, to each of the conditions in dispute and I do that in the light of my general assessment above and with regard to the main issues.

¹ reference ID: 21a-006-20140306 and 21a-006-20140306

² Reference ID: 21a-018-20140306

³ ID: 21a-017-20140306

Condition 6

7. Condition 6 is in two parts. The first restricts development to a single storey dwelling. This is the only aspect of scale referred to in the condition.
8. The appeal site comprises an access to the side and an area of garden to the rear of No 123 Brookhill Street. In the vicinity of the site Brookhill Street is characterised by rows of dwellings built quite close to the road. Most are two storey although there is a single storey dwelling at No 121 adjacent to the appeal site. The Council inform me that there is no precedent for backland development in the locality.
9. In the main views between dwellings are restricted. In the available views back gardens and some outbuildings and garages can be seen. Other than the storage building to the rear of No 123 I found few signs of any significantly scaled buildings behind frontage dwellings. All such buildings that I saw appeared to be single storey in height and scale.
10. At the site visit the main parties pointed out where they felt the position of the dwelling shown on Drawing 447:P/01A Site Visibility & Indicative Layout would be. That is toward the rear of the plot, in the area of the existing storage building and close to the boundary with the back garden of No 125. Although indicative, I consider this to be a fair representation of where a dwelling would generally need to be located on the approved plot in order to maintain separation from No 123 and to achieve amenity space for the new dwelling.
11. The access to the side of No 123 offers a view from the street toward the rear that is wider than most. There is a view of the appeal site and the existing storage building. A dwelling on this site would be similarly visible. A single storey dwelling might not be significantly different in scale and prominence than the storage building. However, even allowing for level changes, the scale of a dwelling with more than one storey would be noticeably more prominent in views from the street. In the available views it would appear incongruous and be harmful to the character and appearance of the locality.
12. There are only limited first floor rear windows at No 123 and the existing back garden is largely enclosed by walls and outbuildings. Peering over a high wall I could see that the bungalow at No 121 has ground floor rear windows looking out over the back garden. In the rear garden at No 125 I observed that a rear sitting room opens onto a landscaped patio with pond, and paths lead toward the rear of the garden. I found that presently all three back gardens have a relatively private and secluded feeling.
13. There is nothing to say that distances between the existing and proposed dwellings would not be acceptable. From my observations I consider that the effects of a single storey dwelling upon the amenities of these adjacent gardens might not be significantly greater than those of the existing storage building in terms of overbearance and enclosure.
14. However, the site is restricted in width and depth and distances to boundaries would be limited. Even allowing for level changes, the effects of the scale of a dwelling with more than one storey upon the amenity of these gardens would be significantly greater than the existing storage building. I conclude that the scale of such a dwelling would have an intrusive and overbearing effect, detrimental to the existing living conditions of occupiers of adjacent dwellings

when in their back gardens. I find scant evidence to demonstrate how such impacts could be mitigated. I am not persuaded that such matters could be dealt with at the reserved matters stage.

15. Therefore I find that the imposition of the first part of Condition 6, restricting the scale of the dwelling to single storey is necessary, reasonable and in compliance with Local Plan Policy H7 and advice in the Framework that planning should always seek to secure a high quality design and a good standard of amenity for all existing and future occupants of land and buildings, and to take account of the different roles and character of different areas. Without such a restriction the development would otherwise not amount to sustainable development and would have been unacceptable. In this way the restriction to single storey enables development.
16. Such an approach is consistent with advice at paragraph 203 of the Framework that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions and similar advice in the PPG.
17. The application is in outline only. All detailed matters except access were reserved. Much would be determined at a later stage. However the PPG encourages the front loading of information to reduce the number of conditions. That is not the case here. I do not consider that this limitation amounts to seeking to dictate the design of the dwelling or that it would prevent or discourage appropriate design innovation.
18. The second part of Condition 6 which prevents window openings or habitable rooms above ground floor level is less clear and somewhat contradictory with the first. If Condition 6 requires a single storey dwelling then a reasonable interpretation would be that habitable rooms above ground floor level would not comply with it.
19. It is conceivable that there could be other windows openings above ground floor level, such as rooflights or high level windows. The potential impact of such windows upon the privacy and amenity of occupiers of No 121, 123 and 125 are reasonable considerations. However, so much would depend upon details such as roof pitch, cill heights, layout and finished floor levels in relation to adjacent gardens and windows. Such information would only be available at the reserved matters stage. In this way, this part of the condition is unnecessary at this stage.
20. I conclude that subject to the deletion of the words '*with no window openings or habitable rooms above ground floor level*' Condition 6 is necessary and relevant to planning and the development permitted to protect the character and appearance of the locality and the living conditions of the occupiers of nearby properties. With the amendment I find that Condition 6 is precise, clearly related to the permitted development, enforceable, reasonable in all other respects and meets the tests at paragraph 206 of the Framework.

Condition 7

21. Condition 7 removes all permitted development rights for extensions and roof alterations to the dwelling. It is not precisely defined by reference to the relevant provisions in the GPDO.

22. Whilst some such developments may give rise to potential adverse impacts requiring scrutiny, I am not persuaded that the submitted evidence demonstrates that all possible extensions or roof alterations to a single storey dwelling would result in an overdevelopment of the site to the detriment of the character and appearance of the locality, or significant harm to the amenities of occupiers of existing dwellings by way of overbearance, overlooking, or loss of daylight. The potential for such impacts could only be properly assessed at the time of the submission of the relevant reserved matters, when the Council would have before them design details and other information necessary to inform such judgements. The exceptional circumstances needed to justify the removal of permitted development rights at this stage do not exist.
23. Condition 7 fails to comply with advice in the Framework and PPG and should be deleted.

Other matters

24. The appellant refers me to two appeal decisions, APP/U1430/A/08/2076180 and APP/P5870/W/15/3004224 where similar issues have been considered. However I do not know the full details of those cases and I have determined this appeal on the merits of the proposal before me and having regard to the specific characteristics of this appeal site and its environs.

Conclusions

25. In respect of Condition 6 I found the restriction of the scale of the dwelling to single storey to be necessary to protect the character and appearance of the locality and the living conditions of the occupiers of nearby properties. I also found it contains elements, which for the specific reasons given lead me to conclude that they should be deleted.
26. With the amendment I have set out, I conclude that Condition 6 is precise and clearly related to the permitted development. It is enforceable and reasonable in all other respects and meets the tests at paragraph 206 of the Framework.
27. The PPG includes advice that conditions for the removal of permitted development rights and will rarely pass the test of necessity. I found no exceptional circumstances for Condition 7. Nor is it precisely defined by reference to the relevant provisions in the GPDO. I conclude that it should be deleted for these reasons.

Formal decision

3. For the above reasons, and having taken all other matters into consideration, including the representations from the occupiers of No 125 Brookhill Street, I allow the appeal and vary the planning permission as indicated in my decision.

Helen Heward

PLANNING INSPECTOR