
Appeal Decision

Site visit made on 25 July 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 22 September 2016

Appeal Ref: APP/E0915/W/16/3142452

**Land adjacent to Hawthorns, Esk Bank, Longtown, Carlisle, Cumbria
CA6 5PT**

- 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 Mrs H Murray against the decision of Carlisle City Council.
 - The application Ref 15/0570, dated 26 June 2015, was refused by notice dated 28 August 2015.
 - The development proposed is erection of 1 No. detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address on the application form was given as 14 Esk Bank. However the site is detached from, and situated to the west, of No 14. The Council's decision notice provided a more accurate address which has been used by the appellant in section D. of her Appeal Form. I have used this address in the heading above, albeit replacing 'to the rear of' with 'adjacent to' Hawthorns in light of comments received from the occupier of that property regarding its orientation. I do not consider that any parties would be prejudiced as a result.
3. Since the appeal was made, I note that the Inspector's report on the examination into The Carlisle District Local Plan 2015-2030, Proposed Submission Draft (emerging Local Plan) was published on 25 July 2016 with recommendations for main modifications. However, none of these relate to the emerging Local Plan policies cited by the Council in the reasons for refusal to which I can consequently give material weight commensurate with the advanced stage of preparation of the emerging Local Plan in accordance with the approach in the National Planning Policy Framework (the Framework)¹.

Main Issues

4. The main issues raised by this appeal are: i) the effect the proposed development would have on the living conditions of occupiers of adjoining properties, in particular 28 Esk Bank; ii) the effect it would have on an existing hedge on the site; iii) whether the site is appropriate for housing development having regard to local and national policies relating to development in areas at risk of flooding, and; iv) the effect it would have on the character and appearance of the area.

¹ Paragraph 216.

Reasons

Living conditions of occupiers of 28 Esk Bank

5. The appeal site is a detached garden located between No 28 and properties known as Hawthorns and Esk View. The site is in a considerably elevated position in relation to No 28 and its back garden. The proposed dwelling would be single storey and set towards the north end of the site.
6. The windows to the proposed kitchen and living room in the west side and south end elevations would have the potential to overlook the rear of No 28 and its garden. The only door to the property would be located on the side elevation too and occupiers and visitors going to and from the proposed dwelling would also be likely to have a view over the garden of No 28.
7. The Council officer's report considers the distance between primary windows in the proposed dwelling and No 28 would achieve minimum separation distances. Intervening outbuildings to the rear of No 28 would shield some limited aspects of that property from overlooking. However the elevated nature of the site would enable views over much of the garden of No 28 which would be materially harmful to the occupiers' living conditions. Furthermore, this elevated situation of the vantage points within the appeal site and proposed building would compound the actual and perceived of overlooking and intrusion which would be experienced within the garden of No 28.
8. There is the potential to reduce or avoid this overlooking by way of the retention of the existing hedge or introduction of appropriate boundary treatments, the effectiveness of which would depend on the final levels within the site and of the dwelling. Notwithstanding the uncertainty as to whether the hedge could be retained (which I consider below) no details have been provided of such levels in relation to the boundary and No 28. It cannot therefore be certain that such boundary treatments would be effective in preventing overlooking or that their height would not have consequential adverse overbearing effects on the proposed dwelling or the garden of No 28. It would not, therefore, be appropriate to try and secure approval of such matters through a planning condition, nor for that matter more fundamental changes to the design of dwelling or its fenestration suggested by the appellant.
9. In any event, the close proximity of the proposed dwelling to the boundary coupled with its elevated situation relative to the garden of No 28 would mean that even actual overlooking could be avoided the proposed dwelling would be an overly dominant form of development on the users of the garden of No 28 which would give rise to an unacceptable level of intrusion.
10. Although the appellant considers that the proposal would not result in the situation being any worse than exists, the location of a dwelling on the site would result in a materially different and more intensive use of the site than its current use as a garden.
11. In failing to demonstrate that there would be no adverse effects on the residential amenity of existing areas or result in unacceptable standards for future users and occupiers of the development, the proposal would conflict with criterion 5. of adopted Carlisle District Local Plan, 2008 (adopted Local Plan) Policy CP5. For the same reason it would conflict with criterion 7. of emerging Local Plan Policy SP 6

and the Framework's core planning principle² of always seeking to secure a good standard of amenity for all existing and future occupants of land and buildings.

Hedge

12. The existing hedge which runs along the boundary of the site with No 28 currently provides a degree of screening between the sites and makes a positive contribution to the area's character. Hedges can also provide a valuable habitat and, in the absence of any evidence to the contrary, would therefore be desirable to retain. That part of the hedge likely to be affected by development is set well back from Esk Bank and is therefore limited in the contribution it makes to the wider area's appearance, its contribution in this respect is largely on the private aspects from adjoining gardens.
13. However, the west elevation of the proposed dwelling would be situated in close proximity to the hedge and this would include the door to the dwelling. From the information available it would appear unlikely that a suitably convenient and commodious pedestrian access to the door could be provided without extensive pruning, if not removal, of the hedge, at least up to the door location.
14. Furthermore, in the absence of any evidence to the contrary, given this proximity it is not certain that excavations and construction access would not adversely affect the hedge or its roots with the result that its retention could not be guaranteed. Locating windows to habitable rooms in such close proximity to the hedge would also be likely to give rise to occupiers of the dwelling seeking to prune or remove the hedge should it interfere with light or views. This adds weight to my conclusions on living conditions above.
15. Whilst there may be less pressure on the that part of the hedge which lies to the south of the proposed dwelling where it would adjoin the proposed garden and parking area, on balance there would appear to be a significant likelihood that a substantial section of the hedge would be adversely affected with consequent harm to the site's character, habitat and neighbours' living conditions.
16. The Hedge Survey provided in support of the application falls short of that required by adopted Local Plan Policy CP3 and the proposal fails to demonstrate that the hedge would be integrated into the new development, contrary to that policy. The proposal also fails to adequately take the guidance in Trees and Development Supplementary Planning Document, 2009 into account, in particular the tree and hedge constraints plan recommended in paragraph 5.8. By not demonstrating that the hedge could be successfully integrated into the proposal it would not comply with emerging Local Plan Policy GI 6.

Flood risk

17. The Council state that appeal site lies within Flood Zones 2 and 3a which are areas which are at medium and high probability of flooding. Paragraph 100 of the Framework advises that development in areas at risk from flooding should be avoided by directing development away from areas at highest risk. Paragraph 101 of the Framework goes on to advise that a sequential, risk-based approach must be taken that steers development towards areas of lower risk. The Framework requires such a Sequential Test to be applied to all development in high risk areas and only if it is not possible to locate development in a lower zone the Exception Test can then be applied.

² Paragraph 17.

18. There is no evidence that an Exception Test has been carried out and more fundamentally, notwithstanding that it was not mentioned in the Council's reason for refusal, there is no evidence before me to suggest that a Sequential Test has been met. As such, the proposal would fail to address flood risk in line with the approach set out in the Framework.
19. The appellant's Flood Risk Assessment is extremely limited in scope and does not adequately address these issues. As the proposal has failed to demonstrate that the site would not be at risk of flooding or that it would not lead to an increased risk of flooding elsewhere the proposal would not comply with adopted Local Plan Policy LE26 or emerging Local Plan Policy CC 4. Although the appellant advises that had the Council requested details of an Exception Test these would have been provided, this does not alter the above position.

Character and appearance

20. As Esk Bank extends to the west, gaps begin to appear in the predominantly continuous built frontages which characterise the distinctive grid plan of Longtown's streets in the area. The appeal site is situated behind a detached garage in one of these gaps and adjacent to Hawthorns whose plan is at an angle to the more regular alignment of surrounding properties.
21. Set within this context the perpendicular alignment of the proposed dwelling, although on a different axis to Hawthorns, follows that which predominates in the area. Coupled with its proposed situation set well back into the plot it would not result in awkward juxtaposition with adjacent buildings. Although its width would extend across much of that of the plot the simple, single storey design would not appear harmfully cramped in this setting.
22. The proposal's height, scale and massing would respond to its context and its layout and design would be well related to existing buildings. As such the proposal would comply with adopted Local Plan Policies CP5 and H1 (although in any case the criteria in Policy H1 would only appear to apply to development outside Longtown). For the same reasons the proposal would also comply with criterion 1 of emerging Local Plan Policies SP 6 and HO 2.
23. In considering the above I have also paid special attention to the desirability of preserving or enhancing the character or appearance of the Longtown Conservation Area. The same reasons lead me to consider that the proposal would not harm the character or appearance of the Conservation Area but would have a neutral effect and consequently preserve its significance. In doing so I note that this reflects the Council's assessment in this regard.

Conclusion

24. For the above reasons, and having had regard to all other matters raised, the proposal would fail to demonstrate that the hedge or the living conditions of neighbours would not be harmed, nor that the site is an acceptable one in terms of flood risk, contrary to the development plan, planning guidance, the Framework and emerging policies. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR