
Appeal Decision

Site visit made on 16 August 2016

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 23 September 2016

Appeal Ref: APP/E2001/W/16/3150685
Land east of New Walk, Driffield, YO25 5LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr GP Atkins (GP Atkin Homes Ltd) against East Riding of Yorkshire Council.
 - The application Ref 15/03811/PLF, is dated 9 December 2015.
 - The development proposed is erection of 1 dwelling and associated parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) the effect of the proposal upon living conditions of future occupants at adjacent Nos 32 and 33 New Walk (Plots No 44 and 45) in respect of outlook and light;
 - (b) the effect of the proposal on highway safety, and;
 - (c) and whether the proposal would make adequate provision for mitigating any adverse impact upon local services and infrastructure.

Reasons

Living Conditions

3. The appeal site is currently an open area of land. To the north are two semi-detached 2-storey dwellings, Nos 32 and 33 New Walk. A tall closed boarded fence forms the boundary between these properties and the appeal site.
 4. The proposed dwelling would be a 3-bedroom dormer bungalow with a pitched roof of around 7m in height. Due to site constraints the proposed dwelling would have a narrow frontage, and a deep plan form at 11.5m.
 5. Due to the small separation distance between the proposed dormer bungalow and Nos 32 and 33, in combination with its depth and its height, I consider that the development would be highly visible from rear habitable rooms and would enclose the rear garden area of Nos 32 and 33. On this basis, I find that the development would have an overbearing impact, which would adversely affect the occupants of Nos 32 and 33.
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6. Furthermore, due to the tracking on the sun, I consider that the development would also give rise to significant overshadowing of Nos 32 and 33. The location of the proposed dwelling to the south of these properties, and the depth and height of this would restrict levels of natural light and sunlight to a harmful degree to the rear garden areas and rear habitable rooms.
7. On this matter, I therefore conclude that the proposed development would cause harm to the living conditions of occupants at Nos 32 and 33 New Walk. The adverse effect in respect of outlook and light would be significant. Accordingly, the proposals would conflict with Policy ENV1 of the East Riding Local Plan Strategy Document 2016 (LP) which seeks to secure high quality design which has regard to amenity of existing properties and paragraph 17 of the National Planning Policy Framework (the Framework) which in terms of providing good standards of amenity to existing and future occupants of buildings.

Highway Safety

8. Concern is raised that the development does not provide for acceptable levels of parking provision in respect of No 32 New Walk (plot 44) as the proposed dwelling would be located on an area that was originally intended to provide off street parking at this property.
9. However, I saw that parking provision has been provided for No 32 with a driveway constructed to the side of this dwelling with room to park 2 cars. I am satisfied that the development would not therefore lead to the removal of off-street parking facilities for No 32.
10. I note that the position of Nos 32 and 33 as built is currently unauthorised and is subject to a separate application which has yet to be validated. Nonetheless, based on the information before me in respect of the previously approved plans (Ref 014/010/1/J) and the situation as reflected by the currently unauthorised layout of Nos 32 and 33 (Ref 014/010/1/K and 014/010/1/REV L) and I find that the proposed development would not result in the loss of any off street parking provision, nor would it impede highway safety through the increase of on street parking.
11. I therefore conclude on this matter that the development would accord with LP Policy EC4 which requires parking provision for new development to reflect expected car usage and the most efficient use of space available. I also consider the proposals accord with the provisions of the Framework, aimed at providing safe and suitable highway access for all users.

Planning Obligation

12. The Council have indicated that the development should make a financial contribution to outdoor play space. Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.

13. I am also required to have regard to the Court of Appeal's judgement of the 11 May 2016, wherein the Secretary of State for Communities and Local Government successfully appealed against the judgment of the High Court of 31 July 2015¹. It follows that significant weight should be given to the Secretary of State's Written Ministerial Statement (WMS) of the 28 November 2014 and the updated Planning Practice Guidance which sets out that planning obligations should not be sought from small scale and self-build development. The proposed development before me would fall below the threshold for such an obligation.
14. In acknowledging the WMS, the Council contend that the appeal site forms part of a wider allocated site which has been granted consent and that it could not be developed in isolation from that wider site as it takes its access from it. The Council's justification is based upon the requirements of the draft East Riding Local Plan Open Space Draft Supplementary Planning Document April 2016.
15. There is a dispute between parties in respect of the number of dwellings on the allocated site, and whether this would be increased overall by the current proposals before me. The appellant also states that the implemented development scheme is based on a scheme allowed at appeal which did not have an obligation with it. However, it is understood that a commuted sum has been paid in respect of open space for 43 dwellings and that an obligation is therefore not required.
16. The supporting text to LP Policy C3 outlines that open space will only be sought via a planning obligation from developments of more than 10 housing units or more than 1000m². This is in accordance with the WMS. The SPD is un-adopted and therefore the weight to which I can attach to the requirements of this is limited.
17. Furthermore, from the limited evidence before me, I am unclear as to whether the provision of open space is required directly as a result of additional demand for new or improved open space, generated by the proposed development as part of the wider site allocation. Specifically, I have no information regarding an assessment of the proposed scheme against accessibility, quality and quality standards as set out in LP Policy C3. Therefore, I cannot be certain of the existing shortfalls in open space, given that this has been provided as part of the existing consented scheme, how the contributions directly relate to the development proposals before me or how the contributions would be spent.
18. Overall, it has not been demonstrated that the contributions sought directly relate to the development or are necessary to make the development acceptable in planning terms. Nor would they meet with the requirements of LP Policy C3 or the WMS in respect of the size of the scheme. Therefore I am unable to conclude that the contributions sought would fully comply with Regulation 122 of the CIL Regulations. In these circumstances, the absence of a planning obligation does not weigh against the development.

Conclusion

19. I note the location of the appeal site within Driffield as a main town and the contribution of a bungalow to the mix of housing in the area. I have also found

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council

no impacts in respect of highway safety and the lack of necessity in respect of the requirement for a planning obligation for open space. However, these factors do not outweigh my findings in respect of living conditions.

20. For the reasons above, and having considered all matters raised, I therefore dismiss the appeal.

C Searson

INSPECTOR