
Appeal Decision

Site visit made on 23 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: 30 September 2016

Appeal Ref: APP/W3005/W/16/3151431

21 Thoresby Avenue, Kirkby in Ashfield, Nottinghamshire, NG17 7LY

- 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 Carl Callaghan against the decision of Ashfield District Council.
 - The application Ref V/2016/0063, dated 20 January 2016, was refused by notice dated 11 March 2016.
 - The development proposed is a new dwelling accessed from Lodge Lane.
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Decision

1. The appeal is allowed and planning permission is granted for a new dwelling accessed from Lodge Lane at 21 Thoresby Avenue, Kirkby in Ashfield, Nottinghamshire, NG17 7LY in accordance with the terms of the application, Ref V/2016/0063, dated 20 January 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plan: 211.AR.0001.
 - 3) No development shall commence until samples of the materials and finishes to be used for the external elevations and roof of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples, unless the Local Planning Authority gives written approval to any variation.

Procedural Matter

2. Comments have been raised by third parties in respect of the red line location plan and block plan which does not include the private access along Lodge Lane. Furthermore, the lack of correct certificate being served is also queried.
 3. While the red line does not incorporate the proposed access, the appellant has indicated that there are rights of access onto Lodge Lane, a matter which is disputed by third parties. However the planning application was registered by the Council, and subsequently determined, on the basis of the information presented in the location plan.
 4. As a section 78 appeal, I am required to determine the appeal on the basis of the information before me. While there is a disagreement in respect of the access, this is a civil matter between the appellant and local residents which
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falls outside of the scope of this appeal and would need to be pursued through other means.

Main Issue

5. The main issue is the effect of the proposed development upon the character and appearance of the area.

Reasons

6. The appeal site forms part of the large rear garden to No 21 Thoresby Avenue, a detached property in a residential area. Dwellings along Thoresby Avenue are varied, with detached and semi-detached properties, set in large, linear plots.
7. Saved Policy ST1 of the Ashfield Local Plan Review 2002 (LP) permits development where it will not adversely affect, amongst other things, the character, quality, amenity or safety of the environment. LP Policy HG5 also permits development of an appropriate design, appearance, scale and siting.
8. The proposed dwelling would be a 3-bedroom dormer bungalow with integral garage. This would be located to the rear part of the existing garden and would front, and be accessed via Lodge Lane, a private road which runs along the rear boundary of No 21.
9. Lodge Lane serves a small number of residential properties. The Lane is gated and properties are accessed via Diamond Avenue, a main road running through Kirkby in Ashfield. Dwellings in this location are typically detached and set in generous plots. Again, the form of these are varied, with many being dormer bungalows of different sizes and with differing designs. Overall, Lodge Lane is characterised as a private road serving existing backland dwellings of a varied character.
10. Many of the rear gardens of properties along the western side of Thoresby Avenue back on to Lodge Lane. At my site visit I saw that some partitioning of these linear plots had occurred at Nos 13 and 15. I also observed that No 2 Lodge Lane is located on the eastern side of this private road, behind Nos 1-9 Thoresby Avenue. Accordingly, while the proposed development would subdivide the garden at No 21, I do not consider that it would introduce a new pattern of development in the locality, nor do I consider that it would fragment the pattern of linear private gardens along Thoresby Avenue or affect the openness of the rear gardens as experienced along Lodge Lane to any harmful degree.
11. Furthermore, while the development would be located to the rear of No 21, and notwithstanding the on-going civil issues in respect of the access, the proposed dwelling would front onto Lodge Lane and would be in proximity with other residential properties along here. Therefore, it would be a single further addition to the group of backland properties all served by Lodge Lane and it would not be isolated or out of character in this respect.
12. I accept that the dwelling and plot would be smaller than others in the area and the overall scale would be different to neighbouring properties. However, given the variety in properties along Lodge Lane, as well as the general lack of visibility from public view, I do not consider that this would be detrimental to the overall mixed character of the area. The remaining garden area would also

be sufficient for the size of house at No 21 and therefore I do not consider the proposals would represent a cramped form of development, nor would it constitute overdevelopment of the site.

13. Overall, I conclude that the proposal would not materially harm the character or appearance of the area and as such I find no conflict with saved LP Policies ST1 and HG5. Furthermore, while the Council reference paragraph 53 of the Framework this relates to the creation of policies to resist inappropriate development of gardens where they would cause harm. No specific Local Plan policies have been developed and as such this is not relevant. In any case, I also find that the proposal would be in accordance with the Framework which aims to secure high quality design (paragraph 17).

Other Matters

14. A number of other concerns from local residents have been put to me. In respect of impacts upon living conditions, the proposed development would ensure that separation distances are in excess of those specified in the Residential Design Guide Supplementary Planning Document (SPD) and therefore I do not consider that the development would give rise to a loss of privacy, outlook or inadequate garden space for neighbouring and future occupants.
15. In terms of highway safety, while Lodge Lane is narrow and is unlit, I am satisfied that Lodge Lane would be able to safely accommodate the low levels of additional traffic arising from the development due to the general road conditions in terms of restricted speed limits and visibility along the length of the Lane. There is no evidence to suggest that access for emergency services would be impeded by the development. I am also mindful that the Highways Authority did not raise any objections in respect of the access on to Diamond Avenue. I therefore do not consider the proposed development would be materially detrimental to the safety of the users of Lodge Lane. The general condition of the site and the maintenance of Lodge Lane free from obstacles are not issues to which I can attach any weight.
16. In respect of comments made regarding the proposals setting a precedent for similar development along Lodge Lane, each application and appeal must be determined on its individual merits and would not justify withholding permission in this case.
17. I acknowledge that gardens are excluded from the definition of previously developed land within the National Planning Policy Framework (the Framework). However, the Framework requires that housing applications should be considered in the context of the presumption of sustainable development. The appeal site is located within Kirkby in Ashfield, a settlement which has a number of services and facilities to meet day to day needs. I also note the range of public transport options serving this settlement. Therefore, while the development would be on the garden of No 21, land which is not considered to be previously developed, the location of development would in general accord with the principles of the framework in terms of managing patterns of growth and focusing development in suitable locations.
18. In respect of the comments relating to the profiteering of the appellant, such matters are not material in my consideration of this appeal, which is based upon its planning merits, rather than on private interests. Other issues relating

to electricity supply and access to water for emergency use would be dealt with via separate regulatory requirements.

19. It is alleged that in allowing the appeal, this may be in conflict with the Equality Act 2010, as a similar planning application in proximity to the appeal site, made by an ethnic minority group, was recently refused. However, no details of this case are presented in evidence before me and it is not clear whether this reference is to an appeal case, or to an application determined by the Council.
20. In any case, discrimination against one person by another because of a protected characteristic, either directly or indirectly, is prohibited conduct and unlawful. The key guiding principles for Inspectors and the Planning Inspectorate are openness, fairness and impartiality. In applying these principles, I have determined this appeal solely upon the basis of the evidence before me and the planning merits of the case.

Conditions

21. In order to provide certainty, I have specified a condition requiring the development to be carried out in accordance with the approved plans, however I have altered this from the suggested wording in respect of amendments being agreed by the Council. I do not consider this to be necessary as it would be possible to make an application under section 73 of the 1990 Act to vary those plans in order to make 'minor material amendments.' I have also specified a condition in respect of external materials in order to ensure the satisfactory appearance of the extension within the locality.
22. In respect of conditions suggested by third parties, the Planning Practice Guidance is clear that conditions restricting the future use of permitted development rights will rarely pass the test of necessity as set out in Paragraph 206 of the Framework and should only be used in exceptional circumstances. In respect of limiting such rights in respect of the future conversion of the garage, and in terms of extensions and other alterations, I do not consider this would be necessary or reasonable as I have found no material harm in respect of highway safety or character and appearance of the area. For similar reasons, I do not consider it to be reasonable or necessary to condition landscaping plans and I am satisfied that the condition relating to external materials is appropriate in ensuring a satisfactory appearance along Lodge Lane.

Conclusion

23. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should succeed.

C Searson
INSPECTOR