

Appeal Decision

Site visit made on 4 October 2016

by Philip Lewis BA (Hons) MA MRTPI

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

Decision date: 26 October 2016

Appeal Ref: APP/W0734/W/16/3152085

Land to the rear, 57 Burlam Road, Middlesbrough TS5 5AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Leon White against the decision of Middlesbrough Borough Council.
 - The application Ref M/FP/0336/16/P, dated 2 March 2016, was refused by notice dated 23 May 2016.
 - The application sought planning permission for substitution of house types of previously approved permissions M/FP/1459/08/P and M/FP/2005/08/P without complying with conditions attached to planning permission Ref M/FP/0737/14/P, dated 15 October 2014.
 - The conditions in dispute are Nos 2 and 4 which state that:
 - 2. The development hereby approved shall be carried out in complete accordance with the plans and specifications for plot 1, 2 and 3 received on 21st July 2014 and specification and plans for plot 4 received 24th September 2014 and shall relate to no other plans.*
 - 4. Boundary treatments will be constructed in accordance with the plans received on the 2nd October 2014 and thereafter retained.*
 - The reasons given for the conditions are:
 - 2. To ensure a satisfactory form of development and for the avoidance of doubt.*
 - 4. To ensure a satisfactory form of development and for the avoidance of doubt.*
-

Decision

1. The appeal is allowed and planning permission is granted for the substitution of house types of previously approved permissions M/FP/1459/08/P and M/FP/2005/08/P without complying with conditions attached to planning permission Ref M/FP/0737/14/P at land to the rear, 57 Burlam Road, Middlesbrough TS5 5AN in accordance with the application Ref M/FP/0336/16/P dated 2 March 2016, without compliance with condition number 2 previously imposed on planning permission Ref M/FP/0737/14/P dated 15 October 2014 and subject to the attached schedule of conditions.

Procedural matters

2. I saw at my site visit that the development was under construction with the external works to the dwellings on plots 1 and 4 largely complete. The Council did not consider the application on a retrospective basis and for the avoidance of doubt, I have dealt with the appeal on the basis of the drawings submitted
-

and not on the dwellings as constructed. I requested copies of the approved plans from the appellant as they had not been provided with the appeal documents.

Background and Main Issue

3. The appeal relates to 2 planning conditions attached to planning permission ref M/FP/0737/14/P and seeks to substitute the house types on plots 1 and 4 from those previously approved. Disputed condition 2 specifies that the development shall be carried out in complete accordance with the approved plans and disputed condition 4 relates to the approved plans for the boundary treatments. No changes are proposed in respect of the boundary treatments within the development and no evidence has been provided in this regard. I shall not therefore consider condition 4 further.
4. The Council refused the application on the basis that the proposed dormers on the dwellings at plots 1 and 4 would give rise to overbearing effects for the occupiers of nearby dwellings due to the additional bulk and detail in the roof planes. The main issue for the appeal therefore is the effect that varying the disputed conditions would have on the living conditions of the occupiers of dwellings on Dufton Road and Thornfield Road, with particular reference to any overbearing effects.

Reasons

5. The proposed dwelling on plot 1 differs from that approved by being a dormer bungalow rather than a one and a half storey house. It would have a lower ridge height by about 0.2 metres and a significantly lower eaves line than the dwelling previously approved; a gabled rather than a hipped roof and the inclusion of 3 ridged dormers within the plane of the roof. During my site visit I viewed the appeal site from 9 Dufton Road. Whilst I noted that the dwelling under construction on plot 1 is in relative close proximity to the rear garden of No 9 and its immediate neighbours, I note from the plans provided that the proposed dwelling is located similarly to that previously approved.
6. Although I noted that the dormers under construction are prominent above the roof plane, and having considered the comments by interested persons that the scale of development at the site is greater than that imagined, on balance, given the reduction in ridge and eaves heights proposed, I do not consider that the proposed dwelling to have any greater effect upon the living conditions of the occupiers of dwellings on Dufton Road in terms of any appearance of bulk than that already approved. Consequently, the appeal proposal would not give rise to any more significant effects upon outlook or overbearing effects than the previously consented dwelling.
7. The dwelling on plot 4 includes five dormer windows at the rear facing the back of properties on Thornfield Road, which I saw at my site visit are in relative close proximity to the appeal site. Whilst these proposed dormers and tops of the windows break the eaves line of the property, I do not consider that they significantly add to the bulk of the building and would not give rise to significant overbearing effects for the occupiers of properties on Thornfield Road having taken into consideration the development already permitted.
8. Interested parties have raised concerns regarding the proposed dormers giving rise to overlooking or a sense of overlooking and a loss of privacy, especially

due to the close proximity of the proposed dwellings to the existing properties. It is proposed that the windows in the dormers facing the neighbouring properties on Dufton Road and Thornfield Road are non-opening and glazed with obscure glass, which would prevent overlooking and safeguard privacy. This could be the subject of a planning condition were I be so minded to allow the appeal. I also consider that the scale of the proposed dormers in respect of the proposed dwellings is such that they would not give rise to any significant overshadowing effects for neighbours than the dwellings already permitted.

9. I conclude that the appeal proposal would not have unacceptable effects upon the living conditions of the occupiers of dwellings on Dufton Road and Thornfield Road. The appeal proposal would not conflict with the Middlesbrough Local Development Framework Core Strategy Policy CS5 which is concerned with achieving a high quality of design and Core Strategy Policy DC1 which is concerned with general development and includes that development proposals take account of the effect on the surrounding environment and amenities of nearby properties.

Other matters

10. In respect of the appearance of the proposed development, I do not consider that the addition of the dormers would be out of keeping with the development approved, which includes other dormer windows. I have also considered the development plan policies and supplementary planning document which has been put to me. These matters do not however lead me to a different conclusion. I have also considered the comments by interested persons regarding loss of vehicular access and the collapse of a wall but those are civil matters outside of the scope of this appeal.

Conclusion

11. For the reasons given above I conclude that the appeal should be allowed and that condition 2 is varied to allow for the proposed substitution of house types.
12. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original planning permission and as set out in the Council officer's report. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
13. I have imposed conditions regarding timescales, specifying the approved plans and requiring details of levels to provide certainty. I have also specified that the front facing dormer windows on the dwelling on plot 1 and the rear facing dormer windows on the dwelling on plot 4 shall be obscured glazed and non-opening less than 1.7 metres above floor level and a condition in respect of flood lighting to safeguard the living conditions of neighbours. I have attached conditions regarding the details of external construction materials and boundary treatments in the interests of the character and appearance of the area. I have also attached conditions regarding surface water discharge and onsite parking during construction in the interests of highways safety and

regarding sustainable urban drainage in the interests of preventing flooding. I have attached a condition regarding a site investigation for potential contamination in the interests of preventing pollution.

14. I have not attached a condition regarding the construction of additional first floor windows as it is not necessary being subject to specific provisions in The Town and Country Planning (General Permitted Development) (England) Order 2015 in Schedule 2, Part 1 Class A, A.3 (b), which require such windows to be obscure glazed and non-opening below 1.7 metres below floor level. I have also not attached a condition in respect of secured by design as from the evidence before me, I do not find it necessary.

Philip Lewis

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 15 October 2017.
- 2) The development hereby permitted shall be carried out in accordance with the plans and specifications for plots 2 and 3 as approved under planning application reference M/FP/0737/14/P and for plots 1 and 4 with the following approved plans: Proposed elevations DWG No 4 Rev C; proposed ground floor plot 1 DWG No 1 Rev C; proposed first floor – plot 1 DWG No 1 Rev C: Proposed first floor – Plot 1 DWG No 2 Rev C; Proposed elevations Plot 4 DWG No 6; Proposed ground floor Plot 4, DWG No 1; Proposed first floor Plot 4 DWG No 2 and site location plan.
- 3) The dwellings hereby permitted shall not be occupied until the front dormer windows at plot 1 facing towards Dufton Road and the rear dormer windows to plot 4 facing towards Thornfield Road have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 4) The development shall only be carried out using finishing materials of which samples have been submitted to and approved by the local planning authority prior to commencement of the development.
- 5) Prior to the first occupation of the dwellings hereby approved, boundary treatments will be constructed in accordance with the plans approved under planning application reference M/FP/0737/14/P and shall thereafter be retained.
- 6) Details showing finished levels of the approved dwellings in relation to properties on Thornfield Road shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the plans as approved.
- 7) Prior to the commencement of development a plan showing the location of temporary car parking to accommodate operatives and construction vehicles during the development of the site and measures to protect any existing footpaths and verges shall be submitted to and approved in writing by the Local Planning Authority and implemented upon commencement of construction and thereafter such parking is to be removed on completion of the works.
- 8) Site investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public; buildings and the environment shall be submitted to and approved in writing by the Local Planning Authority. Any measures as agreed shall be implemented before development commences.
- 9) Prior to the first occupation of the dwellings hereby approved, details of measures to prevent water from flowing onto the highway to the detriment of all highway users must be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development.

- 10) Within three months of the date of this permission, a scheme for a Sustainable Drainage System (SuDS), which shall sustainably drain surface water, minimise pollution and manage the impact on water quality, shall be submitted to and approved in writing by the Local Planning Authority and thereafter to be fully implemented in line with the agreed programme of works to the satisfaction of the Local Planning Authority.
- 11) Details of any floodlighting shall be submitted to and approved in writing by the Local Planning Authority before the buildings hereby approved are occupied. Development shall be carried out in accordance with the approved details.