

Appeal Decision

Site visit made on 13 October 2016

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 1st November 2016

Appeal Ref: APP/T2405/W/16/3154147

205 Blaby Road, Enderby, Leicestershire, LE19 2AR

- 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 Mary Tooby against the decision of Blaby District Council.
 - The application Ref 15/1391/FUL, dated 4 November 2015, was refused by notice dated 11 January 2016.
 - The development proposed is described as "erection of a chalet bungalow dwelling house and garage on a portion of land belonging to No 205 Blaby Road Enderby including the formation of an access driveway from an existing access off the Blaby Road highway".
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Decision

1. The appeal is allowed and planning permission is granted for erection of 1 detached bungalow and garage including associated access at 205 Blaby Road, Enderby, Leicestershire, LE19 2AR in accordance with application ref 15/1391/FUL, dated 4 November 2015 and the plans submitted with it, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan L [..]001, L[..]022 Site Layout Plan, L[..]023 site plan, L[..]024 site plan showing relationship of roof plan to boundaries, L[..]031 gallery plan, L[..]032 roof plan, L[..]033 elevations, L[..]034 sections.
 - 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building 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 details.
 - 4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. This scheme shall include details of:
 - any existing trees, shrubs, hedges, water bodies to be retained and measures of protection in the course of the development;
 - new tree and shrub planting. Including plant type, size, quantities and locations;
 - other surface treatments;
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- fencing and boundary treatments;
 - any changes in levels or contours;
 - the position of service and/or drainage runs (which may affect tree roots).
- 5) All existing trees, shrubs or hedges to be retained on the site shall, whilst the development hereby permitted is being carried out, be protected by suitable fences at a distance equivalent to not less than the spread of the branches from the trunk or such other distance to be agreed by the District Planning Authority in writing. No materials shall be stored, rubbish dumped, fires lit or buildings erected within these fences. Within the areas so fenced off the existing ground level shall be neither raised or lowered, (except as may be agreed in writing by the local planning authority as part of this development). If any trenches or services are required in the fenced off areas, they shall be excavated and back filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left unsevered.
- 6) If any vehicular access gates/barriers are to be erected they shall be set back a minimum distance of 5 metres behind the highway boundary and shall be hung so as to open inwards only.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) order 2015 (or any subsequent re-enactment with or without modification) no further windows, dormer windows or other openings shall be constructed at any time in any first floor/roof slope of the dwelling without the prior permission of the local planning authority.

Procedural Matters

2. The Council altered the description of development to “erection of 1 detached bungalow and garage including associated access (Revised Scheme)”. The appellant has objected to the change of description. However, as I consider the description to more accurately and concisely describe the development, I have also used this description.
3. Outline planning consent¹ has previously been granted on the site for one detached bungalow and garage. Subsequently full planning permission² was granted on the site for one detached bungalow and garage. The application which is the subject of this appeal relates to the erection of a dwelling of the same height and dimensions, but with a gallery floor within the roof void, a large velux window above and a further smaller velux on the south facing roof slope.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of adjoining residential occupiers.

Reasons

5. The appeal property is a large detached bungalow which sits in a predominantly residential area. The property, along with its immediate

¹ 12/0800/1/OX

² 15/0395/FUL

neighbours has a very long rear garden. The appeal seeks permission for the erection of a large bungalow, with accommodation within the roof void, within the rear garden. The Council's concerns relate to the effects that overlooking from windows within the rear roofslope would have on the living conditions of adjoining occupiers. Although the location of these occupiers is not specified, I have taken these to be the adjoining occupiers either side on Blaby Road, and occupiers of dwellings to the rear on Queens Drive.

6. The proposed roof windows would be located high on the roofslope on the south elevation. Anyone standing on the proposed gallery within the roof void of the dwelling would be able to see out of the windows towards properties to the rear on Queen's Drive. The property would be located around 24 metres from the rear party boundary and would be located around 33 metres from the adjoining dwelling. These properties are orientated at an angle and this, along with the distances involved suggests that although some interlooking between upstairs windows and into gardens would be possible, it would not be so proximate as to intrusive, and would be commensurate with that normally associated with a suburban environment. In this regard, the proposal would not materially impact upon privacy either through overlooking, or the perception of it.
7. With regard to properties either side on Blaby Road. The windows would allow views of parts of the rear garden in wider views to either side for occupiers on the gallery. In practice, given the orientation of the windows, such overlooking would only occur in peripheral views and would be restricted to the end sections of the 2 immediately adjoining gardens. Mature boundary planting to the western boundary would also largely mitigate its effects on No 203 and beyond. Taking into account the overall size of the adjoining gardens and the limited proportion of the space that would be affected, the extent of overlooking that would occur would not significantly diminish the quality of the living conditions which they enjoy.
8. I therefore conclude that the proposal would not harm the living conditions of adjoining occupiers and therefore would not conflict with policy R1 of the *Blaby District Local Plan* (Local Plan) which seeks to protect the amenities of adjoining occupiers of development. Neither would it conflict with the *National Planning Policy Framework*, which also seeks to protect the living conditions of existing and future occupiers of land and buildings.

Other Matters

9. The Council also refused the application on the need for a financial contribution towards the provision of open space and recreation. The proposal relates to a single dwelling, and falls below the threshold identified in the Ministerial Statement³. Notwithstanding policy CS12 and CS15 of the Local Plan, which seek to ensure that adequate provision is made for open space and recreation provision, to require that a contribution is made in this case would run contrary to more recently expressed *Planning Policy Guidance*, intended to reduce the construction cost of small-scale new build housing in order to help increase housing supply. In the light of this change to national policy, such a

³ Written Ministerial Statement of the 1st December 2014 by Brandon Lewis MP and subsequent amendments to Planning Policy Guidance in relation to Paragraph: 012Reference ID: 23b-012-20150326 "Are there any circumstances where infrastructure contributions through planning obligations should not be sought from developers?"

contribution would fail to meet all the tests of paragraph 204 of the Framework in relation to planning obligations and cannot therefore be considered to be appropriate in this case.

10. I have also been advised that the gardens are home to newts, which could be impacted by the development. I take into account the views of the Council's own officers, who consider the garden to be an unlikely habitat for Great Crested Newts, given the distance to any substantial ponds. I therefore have no firm basis for concluding that protected species could be harmed as a result of the proposal. I also note neighbours concerns in relation to loss of trees, the appearance of the proposal and its effect on openness, and the potential for the proposal forming a precedent for future development. However, I take into account that permission already exists on site for a substantially similar proposal, which could be implemented as an alternative, which would have a similar effect in relation to these matters and which the Council has found to be acceptable. This limits the weight I attribute to them in the planning balance.
11. The Council have referred to the previous Inspectors decision⁴ which contained a condition restricting permitted development rights relating to the insertion of dormer or other windows in the roof slope. The effect of this condition is that if a dwelling was constructed under that permission, in order to carry out such alterations a planning application would need to be submitted to allow the Council to assess the effects of such a proposal. The condition does not prejudice the merits of any such future proposal and does not prevent the Council or myself from coming to the view that the effects of such development were acceptable. Therefore, whilst I have taken the previous Inspector's decision into account, I do not consider that it precludes the grant of consent in this case.

Conclusion and Conditions

12. I have found that the proposal would have an acceptable impact upon living conditions and having regard to all other matters raised, the appeal is allowed. In addition to conditions relating to the approved plans and period of implementation, I also consider it necessary to impose a condition relating to approval of materials, as although these are listed on the application form, I have not been provided with samples and cannot be assured that their appearance is acceptable. I also consider it necessary to impose conditions relating to the provision of landscaping, including boundary treatment, and the protection of trees on site, to ensure a satisfactory appearance for the proposal. As the proposal is for a single residential dwelling I am satisfied that conditions relating to landscape maintenance are not necessary.
13. The Council have suggested a number of highways conditions which seek to ensure that the development does not have a detrimental effect on the maintenance or passage of pedestrians and vehicles on the public highway. However, as the access point is reasonably level and relates to an existing driveway, I see no need in this case for conditions relating to drainage or loose surfacing, although a conditions relating to the position of any gate would ensure the highway was not obstructed by arriving vehicles, and is reasonable and necessary.

⁴ APP/T2405/A/13/2193674

14. The Council suggested a condition requiring the glazing in the proposed windows is obscure glazed. For the reasons given above I am satisfied that such measures would not be necessary to protect residential amenity. However, I accept that depending on their position, other windows on the roof could have the potential to cause overlooking and so it is reasonable and necessary that permission is sought for any such alterations. I therefore restrict development rights in this regard.

Anne Jordan

INSPECTOR