
Appeal Decision

Site visit made on 7 September 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 3 November 2016

Appeal Ref: APP/D3315/C/16/3146712

39a Mantle Street, Wellington, Somerset TA21 8AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr R Bird against an enforcement notice issued by Taunton Deane Borough Council.
 - The Council's reference is E/0056/43/15.
 - The notice was issued on 12 February 2016.
 - The breach of planning control as alleged in the notice is '*Without planning permission the erection of 2 dwellings in the approximate position marked with black cross hatching on the attached plan marked Plan 2*'.
 - The requirements of the notice are:
 - (i) *Demolish the 2 unauthorised dwellings; and*
 - (ii) *Remove from the property all building materials and rubble arising from compliance with requirement 5(i) above.*
 - The period for compliance with the requirements is 12 months from the date the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. I allow the appeal, and direct that the Enforcement Notice ('the EN') be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of two dwellings at 39a Mantle Street, Wellington, Somerset TA21 8AX referred to in the Notice, subject to the following condition:

The development permitted shall be removed within 12 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:

- (i) Prior to the occupation of the dwellings hereby permitted bin storage facilities shall be provided in accordance with a scheme previously submitted to and approved in writing by the local planning authority, and shall be retained thereafter.
 - (ii) Prior to the occupation of the dwellings hereby permitted covered and secure spaces for no less than 4 bicycles shall be provided in accordance with a scheme previously submitted to and approved in writing by the local planning authority. The approved spaces shall be retained for parking of bicycles for as long as the development hereby permitted remains in existence.
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- (iii) A bollard to prevent the parking of vehicles within the development shall be provided in accordance with details previously submitted to and approved in writing by the local planning authority before the occupation of the dwellings hereby permitted. The bollard shall be retained for as long as the development hereby permitted remains in existence.
- (iv) Prior to the occupation of the dwellings hereby permitted, the windows installed in the first floor of the dwellings shall be obscurely glazed and fitted with restrictive opening stays in accordance with details which have first been submitted to and approved in writing by the local planning authority. The windows shall thereafter be retained as fitted.
- (v) If within 2 months of the submission of such details the Local Planning Authority refuses to approve the schemes submitted under (i)-(iv) or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (vi) If an appeal is made in pursuance of (v) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- (vii) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Procedural and Preliminary Matters

2. Planning permission was granted for the demolition of a function room and erection of 2 dwellings on the site in January 2013¹. Planning permission was subsequently granted in December 2013 for an additional dwelling attached to the northern end of the 2 dwellings to form a row of 3 terraced dwellings².
3. In commencing work on site, I understand that the appellant became aware of constraints which led him to re-site the three dwellings further north of the position shown on the approved plans. The appellant suggests that the difference is in the order of 1 metre north of the approved position.
4. The Council commenced enforcement investigations in light of the concerns raised by neighbours regarding the height of the development and the overlooking impact that had occurred as a consequence. Nevertheless, the Council states in its appeal statement that their examination of the site revealed that the dwellings had not been built in the correct location, albeit their height and first floor window positions were broadly correct.
5. I am told that the investigations also revealed that the boundary wall between the site and 37 Mantle Street was incorrectly detailed in the schemes that were granted planning permission. The Council contends that as the submitted drawings indicated that the wall had a height of 4.3 metres, it was satisfied that any overlooking impact would be avoided. However, it is also alleged by neighbours that the wall along the eastern boundary was only ever a little over 3 metres high at its northern end. I will return to this item later in my decision.

¹ Planning permission Ref 43/12/0081 refers.

² Planning permission Ref 43/13/0127 refers.

6. The appellant contends that the dwellings have been constructed with a shallower pitch than that originally approved, thus lowering their ridge height by approximately 1 metre. He adds that the distance between the houses and the eastern boundary wall is the same as that approved. However, I am not convinced that this can be the case, since the boundary wall is angled towards the development at its northern end and it is therefore inevitable that any re-siting further north would bring the development closer to the boundary wall.
7. I am also told by the appellant that two subsequent applications were made to retain the development as built. An application for the variation of Condition 2 (approved plans) of planning permission Ref 43/12/0081 which related to the two dwellings was refused in January 2016³, contrary to officer recommendation, on the grounds that the development is unacceptably overbearing in relation to the neighbouring garden of 37 Mantle Street. A further application for the variation of Condition 2 (approved plans) of planning permission Ref 43/13/0127 which related to the third additional dwelling was approved in January 2016⁴. The consequence of these decisions is that the Council allowed the retention of the re-sited third dwelling even though it was attached to the two dwellings which it did not allow to be retained in the re-sited position.
8. The Council issued its EN in February 2016. It states in its reasons for issuing the EN that the two dwellings (approved under Ref 43/12/0081) and the additional dwelling (approved under Ref 43/13/0127) have not been built in the correct location, even though it allowed the third dwelling to be retained in its re-sited position under the subsequent application. Be that as it may, the EN does not attack the additional dwelling and states that it is marked on the Plan attached to the EN for identification purposes only.
9. The Council also states in its EN that the unauthorised development is excessive in height (notwithstanding that it has conceded in its appeal statement that the height is broadly correct) and has an unacceptable adverse impact on the amenities of the occupants of the neighbouring properties. It subsequently confirms that the neighbouring properties to which these concerns relate are 3 Tottles Court Road in respect of the adverse overlooking impact and the garden of 37 Mantle Street regarding the unacceptable overlooking and overbearing impact.
10. Whilst the Council acknowledges that planning permission was previously granted for the construction of two dwellings, it considers that as they have not been built in accordance with the approved plans (which were, in any event, based on incorrect survey information), and that the permission has expired, this is not a fallback position that should be given significant weight.

Deemed planning application / ground (a)

11. The appeal on ground (a) is that planning permission should be granted for what is alleged in the EN.

³ Planning application Ref 43/15/0082

⁴ Planning application Ref 43/15/0083

Main Issue

12. Against the background that I have described, the main issue is the effect of the development on the living conditions of the occupants of 37 Mantle Street and 3 Tottles Court.

Reasons

13. The appeal site is located on land to the rear of the former Ship Inn public house which has been converted to two dwellings fronting Mantle Street. I am told that a two storey function room, single storey skittle alley and toilets associated with the former public house previously occupied the site.
14. However, as this had already been demolished at the time of my site visit, I cannot be certain of its precise scale, form or relationship with the neighbouring properties or any subsequent alterations that were made to the fabric that remained during or after its demolition.
15. What I understand from the limited detail on the submitted plans is that the two storey pitched roof element was situated immediately adjacent to the rear of the public house and adjoined both side boundaries, albeit it did not have any windows in the gable ends facing the neighbouring properties. The skittle alley ran along the length of the eastern boundary with No 37 beyond the two storey element and had a pitched roof which adjoined the boundary wall.
16. As already noted, there is disagreement between the parties and the occupants of neighbouring properties as to the former height of the boundary wall between the site and 37 Mantle Street. The appellant states that the wall was previously 4.3 metres high at its northern end, where the skittle alley had been; I have been provided with statutory declarations from the appellant, the appellant's wife and the occupants of 41 Mantle Street to this effect and confirming that its height was reduced to 3.1 metres between December 2013 and January 2014. The occupant of No 37 states that the height of the boundary wall closest to the pub may have been 4.3 metres high where it formed part of the gable end to the building (which has subsequently been reduced in height in part), but it was never that height at the top, northern end of the garden. The occupants of 3 Tottles Court concur that the wall had a height of some 3 metres.
17. Clearly, given the differences of opinion, I cannot be certain of the actual height of the boundary wall at the time planning permission was granted in January 2013. Hence, the Council's claim that the development was considered favourably on the grounds that the wall was of a sufficient height so as not to result in unacceptable overlooking from the first floor windows is, at best, assertion. Be that as it may, it did not attach a condition to the planning permission requiring the height of the wall to be retained at 4.3 metres even if that were so.
18. In this context, and notwithstanding that the re-siting of the dwellings results in the development being unauthorised, I do not agree with the Council that I should not attach weight to the position established by the earlier permission in coming to my decision. I accept that as planning permission was granted for the development in January 2013, with a three year time limit for the commencement of development, the permission has expired. However, at the time the appellant made the application for the retention of the re-sited

dwelling under Ref 43/15/0082, the permission was extant. That is, the appellant could have built the development approved under the earlier permission which was of a similar scale, form and design as that the subject of the appeal. The Council acknowledges in its delegated report in relation to application Ref 43/15/0082 that *'planning permission has been granted for three dwellings on this site in broadly the same position and design'*.

19. Hence, I am of the view that I must have regard to the previous planning permissions in coming to my decision. That is, whether the occupants of 37 Mantle Street and 3 Tottles Court are in a materially worse position as a result of the development that has been constructed that they would otherwise have been had the development been implemented in accordance with the approved plans.
20. The development as approved had first floor windows facing towards 37 Mantle Street and 3 Tottles Court, albeit the presence of a higher boundary may have obscured these windows from view from within the neighbouring properties. Even if the wall were of a height of 3 metres, the Council approved the development on this basis, albeit believing the boundary wall to be higher.
21. However, I accept that the dwellings have been re-sited further north than the position shown on the approved plans. That is, the windows are a distance of between 2 metres and 4 metres from the common boundary and directly overlook the garden of No 37 Mantle Street, together with the dwelling and garden of 3 Tottles Court, adversely affecting the privacy that their occupants should reasonably expect to enjoy.
22. The use of obscure glazing is proposed by the appellant. I understand that in its delegated report in respect of application Ref 43/15/008, the Council considered such measures to be acceptable to overcome the overlooking impact. I would not normally consider that this solution would create satisfactory living conditions for the future occupants of the dwellings; these windows provide the sole means of outlook to the bedrooms and the use of obscure glazing would result in a gloomy and unattractive internal living environment.
23. Nevertheless, notwithstanding my findings that the occupiers of No. 37 would not be in a materially worse position, I consider such a condition to be necessary to safeguard the privacy of the occupants of 37 Mantle Street and 3 Tottles Court. I note the neighbour's concern that this would be insufficient as the glazing could be changed at a later date. I consider that a condition requiring the obscure glazing to be provided and retained would address this concern.
24. Turning to the alleged physically overbearing impact on the occupant of No 37. I observed that there is a considerable difference in ground levels between the appeal site and No 37 such that the first floor of the development roughly aligns with the garden level of this neighbouring dwelling. Given the siting relationship that I have already described, I do not dispute that the proximity of the dwellings is such that their scale and bulk is very apparent from the small garden to the rear of this neighbouring property. However, there is little difference between the current situation and that approved under the 2013 permission. Rather, the Council itself acknowledges that the height of the dwellings is broadly correct.

25. I note the Council's view that the northern end of the garden of 37 Mantle Street was more open and received afternoon sun and that the re-siting of the dwellings in a more northerly position now blocks the sunlight and puts the garden in shade. However, the Council's approval of a third dwelling at the northern end of the pair, already altered the relationship between the development at the site and the garden of No 37 that it describes. The re-sited dwellings merely occupy, in part, an area of the site that would otherwise have been occupied by the attached third dwelling.
26. Hence, I do not consider that the re-sited dwellings would have any additional adverse effect that could justify withholding planning permission.
27. The Council adds that the presence of windows in the east elevation '*increases the overbearing nature of the development as it gives rise to the feeling of overlooking...*' I simply do not understand how the presence of windows can affect the physical impact of the development in terms of its scale and massing, and I find this position to be untenable. The matter of whether the windows have an overlooking impact has already been addressed.
28. I note the concerns of residents regarding the effect of the development on the living conditions of the occupants of 39b, 41 and 43 Mantle Street. However, the Council has not taken issue with this matter in relation to these neighbouring properties. There is no substantive evidence before me that leads me to any different conclusions in this regard.
29. Consequently, I do not find conflict with Policy DM1 of the adopted Taunton Deane Core Strategy 2012 which requires *inter alia* new development to have no unacceptable harm on the character or appearance of an area or the amenity of individual dwellings.

Conditions

30. The Authority has suggested conditions relating to compliance with the approved plans, bin storage facilities, the provision of bicycle spaces, a parking bollard and obscure glazing.
31. I have had regard to whether the suggested conditions meet the tests outlined in the Framework and the National Planning Practice Guidance.
32. As the development has already been carried out, it would be inappropriate to require the development to be carried out in accordance with a set of plans.
33. The requirement to provide cycle parking spaces and a parking bollard are necessary to ensure that safe and convenient access to alternative modes of transport and prevent unauthorised parking within the development.
34. A condition requiring details of refuse storage facilities are necessary to ensure that adequate arrangements are made for future residents of the development.
35. A condition requiring the windows at first floor to be obscurely glazed are necessary to protect the privacy of the occupants of neighbouring dwellings.

Conclusion

36. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Melissa Hall

Inspector