
Appeal Decisions

Site visit made on 8 November 2016

by A A Phillips BA(Hons) DipTP MTP MRTPI

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

Decision date: 29 November 2016

Appeal A Ref: APP/P1045/W/16/3156391

The Old Cottage, Main Street, Kirk Ireton, Derbyshire DE6 3LD

- 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 and Mrs S and G Patel against the decision of Derbyshire Dales District Council.
 - The application Ref 15/00842/FUL, dated 20 November 2015, was refused by notice dated 17 February 2016.
 - The development proposed is erection of two dwellings on land to the rear.
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Appeal B Ref: APP/P1045/W/16/3157642

The Old Cottage, Main Street, Kirk Ireton, Ashbourne DE6 3LD

- 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 and Mrs S and G Patel against the decision of Derbyshire Dales District Council.
 - The application Ref 16/00307/FUL, dated 26 April 2016, was refused by notice dated 10 August 2016.
 - The development proposed is the erection of a single dwelling on land to the rear of The Old Cottage.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed and planning permission is granted for the erection of a single dwelling at The Old Cottage, Main Street, Kirk Ireton, Ashbourne DE6 3LD in accordance with the terms of the application, Ref 16/00307/FUL, dated 26 April 2016, subject to the conditions set out in the Schedule to these decisions.

Procedural Matters

3. Although at the time of determining Appeal A on 20 November 2015 the Council could not demonstrate a five year housing land supply I note that by the time of determining the application the subject of Appeal B on 10 August 2016 a five year housing land supply could be demonstrated. However, the Council considered that the policies of the Derbyshire Dales Local Plan Adopted November 2005 (the LP) were out-of-date as they pre-date the National Planning Policy Framework (the Framework). This remains the Council's position. The Framework advises that due weight should be given to relevant policies in existing plans according to their degree of consistency with the
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Framework. The closer the policies are to the policies in the Framework, the greater the weight that may be given. I have determined the current appeals on that basis.

4. I am also aware that the planning applications the subject of these appeals do not include the demolition of the ancillary stone building to the side of The Old Cottage.

Main Issues

5. The main issue in both appeals is the effect of the proposed development on the character and appearance of the Kirk Ireton Conservation Area.
6. With reference to Appeal A, there is an additional main issue of the effect of the proposed development on the living conditions of the occupants of an adjacent residential property, Greenway, with particular reference to outlook.

Reasons

Character and Appearance of the Conservation Area

7. The appeal site is a large plot of garden land to the rear of The Old Cottage which is a detached two storey house situated in the historic core of the village of Kirk Ireton. It is within the Kirk Ireton Conservation Area and is set in a particularly high quality environment comprising mainly traditional stone cottages, houses and other buildings from mainly the eighteenth and nineteenth centuries in an attractive part of the village.
8. Most buildings in the area are built of local stone with pitched or gabled roofs. The site has a variety of boundary treatments with other residential properties located close to the existing garden area.
9. Policy NBE21 of the LP relates to development affecting Conservation Areas and states that planning permission for development proposals within a Conservation Area will be granted where they preserve or enhance the character or appearance of the area. Although the Framework has been introduced since the adoption of the LP, the overall objectives of Policy NBE21 remain consistent with the broad approach of the Framework with regard to development in Conservation Areas.
10. The Old Cottage is one of the older properties along the Main Street and its large curtilage to the rear along with the large curtilage to an adjacent residential property forms a large area of open space in the village. To the rear the plot is adjacent to more modern housing on Peats Close. As a consequence of previous development in the village these rear curtilage areas form one of the last remaining large open spaces associated with the historic development along Main Street. The proposals would lead to the loss of this expanse of open space.
11. However, the space feels somewhat detached from Main Street and the historic frontage properties. It may be visible from the rear of some nearby residential properties; however, it is not at all prominent from the public realm and therefore its visual contribution to the appearance of the Conservation Area is limited. The dwellings the subject of Appeal A would be located towards the rear of the site with good separation from The Old Cottage, properties fronting onto Main Street and others in the vicinity of the site. Generous open spaces

- would be retained adjacent to both properties in the form of the proposed curtilage areas and the remaining open spaces to the rear of existing residential properties.
12. With reference to Appeal B the single property would similarly retain large areas of open space at the heart of the village.
 13. I acknowledge that the site the subject of these appeals has remained development free and that the proposals would alter the character and function of the area of open space which has been historically associated with residential properties along Main Street.
 14. Although the space lies close to a range of properties, including the historic cottages and houses along Main Street, modern mews development on Ireton Close and less attractive residential properties along Peats Close, it is largely screened from Main Street by existing buildings and structures. As such, it is difficult to conclude that the proposal would be viewed as visually intrusive layering of housing in a cramped form incongruous in its local and historic context. The overall design and materiality of the proposals are suitable in this part of the Conservation Area.
 15. The Council has approved residential development in rear gardens in the past. However, I do not consider that previous decisions should be used to justify the current proposal. In any case I do not have the full details of any previously approved developments and the circumstances of nearby sites appear to me to be materially different to the current case. I am also required to determine the current appeals on their own merits.
 16. On this issue, I conclude that both forms of development would preserve the overall character and appearance of the Kirk Ireton Conservation Area and would not prejudice the setting of important buildings within the Conservation Area to the detriment of overall character and appearance. They would therefore comply with the requirements of Policy NBE21 of the LP and the Framework.

Living Conditions

17. With respect to Appeal A only there is concern arising from the proximity of the proposed dwelling Plot B to an existing residential property known as 'Greenway', which is situated to the rear of the appeal site. I observed at my site visit that Greenway appears to have windows serving habitable rooms in its elevation which faces directly towards Plot B at a distance of less than 10 metres.
18. The appellant contends that the proposed development has been designed to take account of the effect on the living conditions of the occupants of Greenways and that the proposal meets the requirements of the standards of sunlight and daylight published by the Building Research Establishment (BRE) in '*Site Layout for Daylight and Sunlight. A guide to good practice 2011*'. I also observed on site that relatively dense hedging and shrubs exist along the boundary between Greenway and the appeal site which do restrict daylight levels to the existing property.
19. Nonetheless, Plot B would be a mostly solid structure with a gable end very close to the site boundary. The nature of the effect of such a solid structure would be very different to the effect of existing vegetation on the outlook of

adjoining occupants. Although the evidence before me indicates that the proposal meets BRE guidance in terms of sunlight and daylight standards, it would be a dominant, intrusive and overbearing feature which would be harmful to the outlook of the occupants of the adjacent property.

20. The Council considers that the development may also be prejudicial to the existing landscaping along the boundary. Although I have no evidence that this would be the case, given the proximity of the buildings to the boundary there is some risk that the screening could be harmed, exacerbating the effect of the solid structure on the outlook of the occupants of Greenway.
21. I conclude that the proposal the subject of Appeal A would be harmful to the living conditions of the occupants of the adjacent property, Greenway, with particular reference to outlook. This would be contrary to the amenity requirements of Policies SF5 and H9 of the LP which remain broadly consistent with the approach to development as set out in the Framework.

Other Matters

22. With respect to Appeal A I have had regard to other matters raised including highways and access concerns, overlooking and privacy, drainage, lack of affordable housing, wildlife and health and safety concerns. However, as I am dismissing Appeal A on the main issue of living conditions for the reasons given above, I have not pursued these matters further.
23. However, with respect to Appeal B I am aware of other matters raised from interested parties that are not addressed above. These include living conditions, highways and access, drainage, pressure on local schools, trees and wildlife and precedent.
24. In terms of living conditions the evidence before me, and my observations on site, lead me to conclude that because of separation distances and orientation of the properties the proposal would not result in harm to the living conditions of the occupants of existing residential properties in terms of privacy, overlooking or loss of light. Nor do I consider that the noise levels arising from the access to a single property would be harmful to living conditions. Given the limited scale of the proposal I do not consider that the disturbance arising from construction activity would be significant. As such, a condition limiting the hours of operation is unnecessary in this case.
25. The County Council's Highways Officer has raised no objections to the proposals, subject to the attachment of suitably worded conditions. I consider that the proposed access and parking arrangements are adequate to serve the needs of the proposed dwelling. In approving planning permission with respect to Appeal B I have attached appropriate highways conditions as explained below.
26. I have also considered concerns regarding the drainage of the site. The application proposes connection in to the existing drainage system via mains drainage connections in the nearby road. The site is not within an area at risk from flooding and as such I consider that satisfactory drainage can be achieved.
27. Finally, there is some concern that the development would lead to further pressure on local schools. I have no evidence that this is a current problem

and the development of a single dwelling would be of little consequence with regard to this matter.

28. I have no evidence that the proposal would be harmful to any nature conservation interest within the site or that important trees would be lost.
29. I have also considered the argument that the grant of planning permission would set a precedent for other similar developments. However, there are limited comparable sites nearby where a similar proposal may be put forward in the future. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.
30. Finally, some concern has been raised regarding the effect of development on the stability of neighbouring properties. However, I have no evidence that this would be the case. Furthermore, it is a well-established principle that the planning system is not concerned with such matters. Furthermore, I can find no reason why the grant of planning permission would negate or supersede any private legal rights relating to property. Accordingly, such issues have not had any material bearing on my assessment of the planning issues in this case.

Conditions

31. The Council has suggested a number of conditions that I have had regard to in allowing Appeal B. In addition to the condition limiting the lifespan of the planning permission I have specified the approved plans, as this provides certainty. Conditions requiring the submission and approval of external materials and hard and soft landscaping details including their implementation are required in order to safeguard the character and appearance of the area.
32. I have also specified conditions relating to the provision of space for site accommodation, storage of plant and materials, parking and manoeuvring of site operative's and visitors' parking, together with loading, unloading and manoeuvring of goods vehicles and the laying out of spaces for car parking and turning in the interests of highway safety. The submitted plans clearly show the provision of refuse, recycling and garden waste bins within the curtilage of the proposed dwelling. Consequently, I do not find it necessary to impose a condition relating to the bin storage.
33. The Framework advises that conditions should restrict national permitted development rights only where there is clear justification to do so. I am not satisfied that in this case the Council's suggested condition to remove householder rights is necessary as no clear justification is provided.

Conclusion

34. I have found no harm with respect to both Appeals A and B, in terms of the effect of the proposals on the character and appearance of the Kirk Ireton Conservation Area.
35. However, with respect to Appeal A I have found that the proposal would be harmful to the living conditions of the occupants of an adjacent residential property, Greenway, with particular reference to outlook. That is the overriding consideration in that case.

36. Therefore, having had regard to all other matters raised, I conclude that Appeal A should be dismissed and Appeal B should be allowed.

Alastair Phillips

INSPECTOR

SCHEDULE OF CONDITIONS (6 IN TOTAL)

- 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 plans: 01-001 rev 001, 01-002 rev 001, 01-003 rev 001, 01-101 rev 001, 01-102 rev 001, 01-301 rev 001 and 01-302 rev 001, all for Project Number 20349.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. This shall include stonework, roofing materials, windows and doors, downpipes, guttering and hard surfacing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) an indication of existing trees, hedgerows and other vegetation on the land;
 - ii) retained trees, hedgerows and other soft landscaping features where relevant;
 - iii) measures for the protection of retained vegetation during the course of the development;
 - iv) soil preparation, cultivation and improvement;
 - v) all plant species, planting sizes, planting densities, the number of each species to be planted and plant protection;
 - vi) earthworks showing existing and proposed finished levels or contours;
 - vii) means of enclosure and retaining structures;
 - viii) boundary treatments; and
 - ix) hard surfacing materials.

The soft landscaping works shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority.

- 5) Prior to the commencement of any development space shall be provided within the site for site accommodation, storage of plant and materials, parking and manoeuvring of site operatives' and visitors' vehicles, together with the loading, unloading and manoeuvring of goods vehicles in accordance with a scheme to be submitted to and approved in writing

by the local planning authority prior to the commencement of development. Once implemented the space shall be retained free from any impediment to its designated use throughout the construction period.

- 6) The dwelling shall not be occupied until space has been laid out within the site in accordance with drawing no. 01-003 rev 001 for 2 cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.