

Appeal Decision

Site visit made on 21 November 2016

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 30th November 2016

Appeal Ref: APP/K2420/W/16/3156193

9 Equity Road East, Earl Shilton LE9 7FZ

- 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 Paul Batson, The Breson Partnership against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 16/00339/FUL, dated 14 April 2016, was refused by notice dated 10 June 2016.
 - The development proposed is two dormer bungalows including garages.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The reasons for refusal as stated on the planning decision notice refer to the Saved Policies of the Hinckley and Bosworth Local Plan 2001 (the LP). Since the planning application was decided the Site Allocations and Development Management Policies DPD July 2016 (the SADMP) has been adopted. The Council has confirmed that the LP is no longer part of the development plan and that the Supplementary Planning Guidance on New Residential Development is no longer part of the supporting planning guidance. I have considered the appeal on this basis.

Main Issues

3. The main issues are:
 - the effect of the proposal on the living conditions of occupiers of nearby properties and whether or not satisfactory living conditions would be provided for the occupiers of the proposed dormer bungalows taking particular account of privacy; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

4. The appeal site is situated to the side and rear of No 9 Equity Road East. The two proposed dormer bungalows would be of the same design and would be positioned in the rear garden of No 9.
 5. Both bungalows would have two rooms in the roof space. Although one of these is labelled as storage it is shown on the plans as being larger than the
-

- room labelled as bedroom. It therefore seems highly probable that both rooms would be used as bedrooms.
6. The appellant considers that bedrooms would mostly be used for sleeping and are not occupied as frequently during the day when overlooking of amenity areas is an issue. Whilst this might be the case it is not always so and therefore there is a similar potential for overlooking of neighbouring properties. I consider this to be the case irrespective of whether it would be younger people using such a room or whether other Councils take a different approach.
 7. The proposed dwelling at Plot 2 would be separated from the shared boundary with No 5 Equity Road East by a 3.2m wide garage with two narrow paths either side. The first floor room labelled as storage would have a roof light facing No 5. The appellant considers that due to the width of the proposed roof light and the roof slope, occupiers would have to 'stoop' close to the window to gain views into neighbouring gardens. However the detailed elevation on plan Ref 9ER/2016 1/3 shows three panes in the roof light which, together, would be of about the same width as the first floor window depicted for the front elevation. In addition the proposed first floor layout on the same plan appears to show the roof light would stand proud of the roof slope. On this basis I conclude that it is likely there would be an unacceptable degree of overlooking of No 5 from the roof light.
 8. Both of the proposed dwellings would have first floor bedroom windows facing towards the garden retained for No 9. The window proposed at Plot 1 would be about 7.5m from the retained garden and would have a direct view of it. The window proposed at Plot 2 would be a little further to the side and the view of the retained garden would be more oblique.
 9. Due to the closeness of the windows to the garden and as the appeal site is at a slightly higher level I consider that there would be an unacceptable degree of overlooking of the garden of No 9 as a result of the proposal. I acknowledge that many residential properties are subject to some degree of overlooking but this is usually from a further distance, as is the case with many of the properties on Equity Road East, and is therefore less intrusive. Moreover I do not consider it would be good design to accept such an arrangement even if the owners of No 9 have no objections or whether subsequent occupiers would be aware of the degree of overlooking.
 10. The proposed roof light for Plot 1 would face towards the side elevation and rear garden of the dwelling proposed for Plot 2. Whilst the roof of the dormer bungalow at Plot 2 would impede overlooking from the roof light proposed for Plot 1 to some degree, the garden for Plot 2 is relatively small. From the available evidence I find I cannot safely conclude that sufficient private open amenity space would be provided for future occupiers of Plot 2.
 11. For the reasons set above I conclude that the proposed development would result in an unacceptable effect on the living conditions of existing and future occupiers of Nos 5 and 9 Equity Road East by virtue of overlooking and loss of privacy and would fail to provide satisfactory living conditions for future occupiers of the dormer bungalow proposed for Plot 2 for a similar reason. Accordingly the proposal would be contrary to Policy 22 of the Earl Shilton and Barwell Area Action Plan 2014 (the AAP), Policy DM10 of the Site Allocation and Development Management Policies DPD 2016 (the DPD) and those principles of

the National Planning Policy Framework (the Framework) that seek a good standard of amenity for occupiers of land and buildings.

Character and appearance

12. The appeal site is within the settlement boundary of Earl Shilton. The surrounding area is residential in character with a variety of house styles and sizes including houses, bungalows and dormer bungalows. Most of the buildings on this part of Equity Road East are set back from the roadside by about the same distance. Generally the gardens are long and fairly narrow. The garden for No 9 is of typical length but is relatively wide compared to those to either side.
13. The first reason for refusal of the planning application refers to Paragraph 53 of the Framework. This says that local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
14. Policy 2 of the Hinckley and Bosworth Core Strategy 2009 indicates that a minimum of ten dwellings should be delivered in Earl Shilton. I have seen no evidence to indicate that the Council has any policies to restrict development of residential gardens. The site is in a residential area with access to goods and services and I conclude there would be no objection in principle to residential development of an acceptable design that would meet all other planning policies and material considerations.
15. There is a double garage and an enclosed carport/shed between the side wall of No 9 and the boundary with No 5. One garage space would be retained for No 9. The remainder would be removed to enable the construction of a shared private drive to serve the proposed dwellings. Although a shared drive is not typical in the nearby area many of the properties on Equity Road East have hard surfaced areas for access/parking to the front and/or side. With appropriate surfacing materials and planting to either side I conclude that the proposed drive would not be so out of keeping with the character and appearance of the area as to warrant refusal on such a ground alone.
16. The proposed development would result in two properties set behind the prevailing line of buildings without a formal road frontage. This is not typical but in the local area buildings can be seen behind others and in principle in this case I see no reason why buildings set back from the road, even as dwellings rather than ancillary outbuildings, would not be acceptable in a built up area provided they were of an appropriate design and all other material planning considerations were satisfied.
17. No 9 is a bungalow with rooms in the roof space. Given the mix of dwelling types locally the scale and design of the proposed dormer bungalows would not be out of keeping with the wider area or No 9. However, due to their size and layout so close to each other and to No 9, the development as a whole would appear cramped and contrived. On balance for the reasons set out above I conclude that the proposed development would have an unacceptable effect on the character and appearance of the area. Accordingly it would conflict with Policy 22 of the AAP and Policy DM10 of the DPD and those principles of the

Framework that seek good design that respects the character and appearance of the local area.

Conclusion

18. The proposed development would add to the housing stock of the Borough. However, in conflicting with Policy 22 of the AAP and Policy DM10 of the DPD, the proposal does not comply with the development plan taken as a whole. For the reasons set out above and taking into account all other relevant matters raised I conclude that the appeal should not succeed.

SDHarley

INSPECTOR