
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: 6th January 2017

Appeal Ref: APP/K2420/W/16/3153867

Land to the Rear of 25, 27 and 29 Burbage Road, Burbage, Hinckley, LE10 2TS

- 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 Shaun Hussey of Dash Homes (Midlands) Ltd against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 16/00178/FUL, dated 25 February 2016, was refused by notice dated 27 May 2016.
 - The development proposed is subdivision of rear gardens of No's 25, 27 and 29 and erection of four dwellings and erection of single garages for No's 25 & 27.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 6 December 2016.

Decision

1. The appeal is allowed and planning permission is granted for subdivision of rear gardens of No's 25, 27 and 29 and erection of four dwellings and erection of single garages for No's 25 & 27 Burbage Road at land to the rear of 25, 27 and 29 Burbage Road, Burbage, Hinckley, LE10 2TS in accordance with application Ref 16/00178/FUL, dated 25 February 2016 and the plans submitted with it and subject to the conditions in the attached schedule.

Procedural Matters

2. The application originally proposed the erection of 5 detached dwellings and new garages for Nos 25 and 27 Burbage Road. This scheme was amended during the course of the application to comprise a scheme for 4 dwellings. The Council altered the description of development to "subdivision of rear gardens of No's 25, 27 and 29 and erection of four dwellings and erection of single garages for No's 25 & 27". The site address was also altered to "land to the rear of 25, 27 and 29 Burbage Road". As this more accurately describes the development proposed and its location, I have also adopted the same description.
 3. Following the refusal of the application the Council formally adopted the *Site Allocations and Development Management Policies Development Plan Document* on 12 July 2016. I am advised that this now supersedes the remaining saved policies in the *Hinckley and Bosworth Local Plan 2001*. I have therefore determined the appeal on that basis.
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4. During the course of the appeal the appellants submitted a noise survey which had not been before the Council at the time the application was determined. As such, I have given those parties for whom noise was expressed as a concern the opportunity to comment on the survey and am satisfied that their interests have not been prejudiced.

Main Issue

5. The main issue for the appeal is the effect of the proposal on the living conditions of adjoining residential occupiers.

Reasons

6. Burbage Road in the vicinity of the appeal site is characterised by large dwellings of varying architectural styles. These sit back from the road on large plots, and some have large rear gardens. The appeal site comprises sections of the gardens of 3 of these properties, numbers 25, 27 and 29. This forms a backland plot which is adjoined to the side and rear by the gardens of properties on Elm Tree Drive, The Coppice and No 35 Burbage Road, itself a backland plot which sits behind the main frontage. The proposal comprises the erection of four detached dwellings which would be accessed via a driveway which would run between the existing Nos 27 and 25. The Council's concerns relate to the effect of the development on the living conditions of adjoining occupiers.
7. The Council and residents have identified the use of the access as being a potential source of disturbance for adjacent occupiers at 25 and 27 Burbage Road, and also for residents of 18 Elm Tree Drive. During my site visit I noted that the new access point would run along the line of the existing boundary between 25 and 27 Burbage Road. The access would be fenced in and so there would be no loss of privacy, or intrusion from vehicle lights. The introduction of vehicular movements associated with 4 new dwellings would be likely to be noticeable, especially given that the access route is currently private garden. Nevertheless, the site is in a residential area, within which noise from road traffic is an established feature. Furthermore, the property is orientated with almost all its main windows directed parallel with the access route and so limiting direct overlooking. I therefore do not consider that the effects of the proposal would be so intensive as to significantly diminish the living conditions experienced within the dwelling or within the garden.
8. With regard to the effect on No 27, the side elevation of the property has a doorway, with a glazed panel in its upper section. The close proximity of the proposed fence would be visible within the kitchen. Nevertheless, the kitchen door which is glazed, does not appear to provide a significant source of outlook to the room and so I am satisfied that living conditions within it would not be harmed to a significant degree. Neither would the vehicular movements associated with the proposal be likely to cause disturbance which would significantly diminish enjoyment of the rear garden.
9. No 19 Elm Drive is a large detached bungalow, the rear elevation of which sits close to the boundary with the existing garden of No 25. The proposed access would sit of the opposite side of this, within the existing garden of No 27. Taking into account the relative distance to the access of around 15m and the likely intensity of its use, I am satisfied that the proposal would not lead undue intrusion.

10. The Council and residents have also expressed concerns regarding noise and disturbance from activity within the gardens of the proposed properties. Whilst it is likely that the normal activities of future residents will be heard from time to time, I have nothing before me to suggest that the intensity of development proposed would generate intrusion above that to be expected within a residential area, and so do not consider this to be likely to be materially harmful.
11. With regard to the impact of the proposal on privacy. The Council have confirmed that the proposal accords with the minimum separation distances outlined within the *Supplementary Planning Guidance on New Residential Development* (SPG), aimed at ensuring that the effects of new development on existing residential occupiers are not harmful. I am therefore satisfied that other than the side facing window which overlooks the garden of No 35 Burbage Road, the effects of which could be mitigated by a condition, the proposal would not harmfully reduce privacy within adjoining dwellings or their respective gardens. Furthermore, whilst I accept that the perception of overlooking can also diminish living conditions, in this case I am satisfied that having regard to the position of windows and the separation distances involved the proposal would not lead to significant harm in this regard.
12. I therefore conclude that the proposal would not adversely affect the privacy or amenity of nearby residents and I find no conflict with Policy DM10 of the *Allocations and Development Management Policies Plan Document*, which seeks to ensure that new development does not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings, as a result of noise or visual intrusion. It would also not conflict with guidance within the *National Planning Policy Framework*, which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

13. A large number of local residents have expressed concerns relating to highway safety. In particular, the proximity of the access to the existing 4 way junction at Brookside and Elm Tree Drive and its more intensive use are a source for concern. In coming to a view I take into account the comments of the County Highways Engineer, who noted that traffic queuing at the junction would be likely to delay egress from the site at busy periods. Nevertheless, the junction has a very low incidence of recorded accidents. Furthermore, the number of proposed dwellings would not lead to a significant increase in traffic using the junction and so would be unlikely to pose a danger to highway safety. As such, if appropriate conditions to ensure a satisfactory access, provision of adequate visibility splays, parking and turning facilities and measures to ensure pedestrian and driver safety during construction, the proposal would not compromise highway safety, including the safety of pedestrians.
14. Some residents have expressed concerns in relation to the appearance of the dwellings and the character of the area. However, I am satisfied that the design of the scheme reflects the prevailing character of large detached dwellings, and in those available views of the site the appearance of the dwellings identified within the *Burbage Village Design Statement* and so would be in keeping with the already varied architectural style on the locality. The proposal would lead to a more intensive use of the site. However, this would

not be out of character with the pattern of development in the wider area, and it would be visually acceptable and would not lead to harm to residents, I am satisfied that it would not comprise an over-development of the site.

15. The proposal would provide sufficient on site parking to serve the new dwellings, as well as both Nos 25 and 27 Burbage Road. I therefore do not consider that the proposal would lead to harm in this regard. I note the concerns of local residents with regard to increased pressure on local schools and other services. Having regard to the limited scale of development proposed I have no evidence that it would lead to a harmful increase in demand for community services or open space.
16. The existing trees on site are proposed for retention, and I note that the Council's Arboricultural Officer is satisfied that following revisions to the scheme, it would be unlikely to compromise the health of trees within the scheme. I therefore do not consider the proposal would have a harmful effect in this regard. I note the concerns raised in relation to the effect of the proposal on biodiversity within the site. I have no evidence that the site is likely to provide a habitat for protected species, and whilst the loss of garden is nonetheless likely to lead to some small loss of habitat, I have no reason to consider that this would lead to significant harm.
17. I take into account concerns regarding waste storage and collection but having regard to the layout of the site and the measures shown on the revised plans, I am satisfied that it provides an acceptable collection point for refuse. I note that Severn Trent Water are satisfied that drainage details provided by means of a condition would be appropriate in this case, and I see no reason to disagree with this view. Lastly, I am mindful that a landfill site in the area may have the potential to cause harm as a result of the effects of landfill gas. I take into account that the site lies within an established residential area and that as such, if a source of landfill gas was identified on site any likely adverse effects could be appropriately mitigated by means of measures secured by a planning condition.

Conclusion

18. The proposal would not harm the living conditions of existing residential occupiers. Neither would it be harmful to highway safety, or harm the character or appearance of the area, or lead to harm to trees or community services. It would not lead to a significant loss of wildlife habitat and would make adequate provision for site drainage, waste disposal, the potential effects of landfill gas. According, having regard to all other matters raised, the appeal is allowed.
19. The Council have suggested a number of conditions, which I have considered against the guidance provided in the Planning Practice Guidance. In addition to conditions relating to the period of implementation and approved plans, I also consider it reasonable and necessary to require details of the external materials to be used in the development, and for details of proposed boundary treatments, in order to ensure an acceptable appearance for the development.
20. As the site appears to be relatively level, I do not consider it necessary to require details of site levels or floor levels on the site. However, in order to ensure the privacy of adjoining occupiers of No 35 Burbage Road, it is necessary to require that the proposed side window on plot 1 is obscure glazed

and non opening. In order to ensure satisfactory drainage and to ensure adequate protection in relation to landfill gas I also consider a condition to secure this to also be reasonable and necessary.

21. The Council have suggested a number of conditions relating to highways matters, these comprise a condition specifying the provision of adequate parking on site, the prohibition of gates or barriers within 5 metres of the highway, the provision of appropriate pedestrian visibility splays, the nature of the access and a condition requiring the closure of any existing access points. I consider all these conditions to be reasonable and to be necessary to ensure the proposal does not have an adverse effect on highway safety. Some of the details of the last 3 matters are provided on plan ref BRH/LP/100J and so I have altered the conditions accordingly. Lastly, a condition requiring a construction traffic management plan is also required to mitigate and reduce disturbance and inconvenience to existing occupiers during construction.

A Jordan

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows:- Site Location Plan Drawing No. BRH/LP_/110B and Site Context Plan Drawing No. BRH/CP_/111C received by the local planning authority on 19 April 2016; Site Layout Plan Drawing Nos. LP_BRH/02D and BRH/LP/100J, Street Elevation Drawing No. BRH/SE/10C, House Type A Drawing No. BRH/HT_A/01A, House Type B1 Drawing No. BRH/HT_B/01D, House Type B2 Drawing No. BRH/HT_B/02D and House Type C Drawing No. BRH/HT_C/01B received by the local planning authority on 9 May 2016; and Garages Drawing No. BRH/HT_G/01A received by the local planning authority on 18 April 2016.
3. No development shall commence on site until representative samples of the types and colours of materials to be used on the external elevations of the dwellings and garages hereby permitted have been deposited with and approved in writing by the local planning authority, and the scheme shall be implemented in accordance with those approved materials.
4. No development shall commence on site until such time as the existing and proposed ground levels of the site, and proposed finished floor levels have been submitted to and agreed in writing by the local planning authority. The development shall then be implemented in accordance with approved proposed ground levels and finished floor levels.
5. No development shall commence on site until drainage plans and details for the disposal of surface water, incorporating sustainable drainage principles (SuDS), and foul sewerage have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
6. No development approved by this permission shall be commenced until a scheme for the monitoring of landfill gas on the site has been submitted to and agreed in writing by the local planning authority which shall include details of how any landfill gas shall be dealt with. The approved scheme shall be implemented in accordance with the agreed details and any remediation works so approved shall be carried out prior to the site first being occupied.
7. Notwithstanding the submitted details, prior to any development commencing on site, full details of all boundary enclosure measures and an implementation schedule shall be submitted to and approved in writing by the local planning authority, and the scheme shall be implemented in accordance with those approved details.
8. The shared private drive shown on approved plan ref BRH/LP/100J shall be a minimum of 4.8 metres wide and shall be surfaced with tarmacadam or similar hard bound material (not loose aggregate) for at least the first 5 metres behind the highway boundary and thereafter a minimum of 4.25 metres wide. The access drive shall be so provided before any dwelling hereby permitted is first occupied and shall thereafter be permanently so maintained.

9. The scheme for the permanent closure of all redundant existing vehicular accesses and reinstatement of the crossings to highway footway and verge shown on approved plan ref BRH/LP/100J shall be implemented in accordance with the approved plan and completed within one month of the new access first being brought into use.
10. The 1.0 metre by 1.0 metre pedestrian visibility splays shown on approved plan ref BRH/LP/100J shall be provided on the highway boundary on both sides of the access at its junction with Burbage Road with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway. Once provided the splays shall be permanently so maintained at all times thereafter.
11. Prior to the first occupation of any of the dwellings hereby permitted, the off-street vehicle parking and turning spaces shall be provided in accordance with the approved Layout Plan A Drawing No. LP_BRH/02D received by the local planning authority on 9 May 2016 and once provided shall be so maintained and retained for such use at all times thereafter.
12. No vehicle access gates, barriers, bollards, chains or other obstructions shall be erected within 5 metres of the adopted highway boundary.
13. No development shall commence on the site until such time as a construction traffic/site traffic management plan, including hours of work, working practices, wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision, has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and timetable.
14. Notwithstanding the submitted details, the first floor landing window on the south east side elevation of House Type A (Plot 4) facing 35 Burbage Road shall be non-opening and fitted with obscure glazing and once so provided shall be permanently maintained as such at all times thereafter.