

Appeal Decision

Site visit made on 30 November 2016

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 16 January 2017

Appeal Ref: APP/N2739/W/16/3158300

Land to rear of Yew Tree House, Chapel Green, Appleton Roebuck, York, North Yorkshire YO23 7DP

- 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 Eileen Carter against the decision of Selby District Council.
 - The application Ref 2015/1186/FUL (8/79/235/PA), dated 29 October 2015, was refused by notice dated 15 July 2016.
 - The development proposed is erection of new build 3 bedroomed detached dormer bungalow with new turning head. Demolition of existing brick garage and stone garden wall.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Eileen Carter against Selby District Council. This application is the subject of a separate Decision.

Preliminary matter

3. The date of the application given on the planning application form provided to me was 28 February 2016. However, a number of documents, including the application form, appear to have been amended and superseded over the course of the application's consideration by the Council. The appeal form, officer report and Council decision notice state the valid date of the application as being 29 October 2015. For the avoidance of doubt, this is the date I have used in the heading above.

Main Issues

4. The main issues are:
 - (a) Whether or not adequate arrangements are made for the disposal of surface water from the site.
 - (b) The effect on the future condition of the adjoining oak tree, with the consequent risk of harm to the character and appearance of the area, which has been designated as a Conservation Area;
 - (c) The effect of the development on the living conditions of the occupants of Yew Tree House, 3 Chapel Green, Mill Reef and Westfield House with particular regard to privacy, overshadowing and outlook;
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- (d) The effect of the development on the living conditions of future occupants of the development, with particular regard to amenity space.

Reasons

5. The appeal site comprises part of the rear garden of Yew Tree House, a relatively modern detached dwelling set back from Chapel Green. The development would be accessed by a shared drive, which currently provides access to Mill Reef. This is a dormer bungalow also located in a backland plot behind a short row of terraced dwellings to the left of the access, including 3 Chapel Green. The drive also provides access to a detached garage that serves the host dwelling. The garage would be replaced by the proposed three bedroom 1.5 storey dormer bungalow. The site is located within a defined 'Designated Service Village' in the Core Strategy¹ (CS) and thus the Council has no objection in principle to development in this location. The site is also located within the Appleton Roebuck Conservation Area (ARCA), which I shall address later in my decision.

Drainage and flooding

6. The Internal Drainage Board (IDB) confirmed in their comments that this is an area where surface water drainage is an issue. The Council's main concern is that they have insufficient comfort that an adequate solution can be identified, which would not have a harmful effect on the root system of a neighbouring oak tree. The root protection area (RPA) of this tree extends extensively into the site and I shall return to this matter later in my decision. However, if a solution cannot be found which would protect the health of the tree, then the result would be a site with inadequate drainage.
7. The Council's reason for refusal suggests that the proposed use of a soakaway and a rainwater harvesting tank has not been demonstrated as providing sufficient drainage. However, their appeal statement concludes that this method could provide an adequate solution depending on the size and siting of the soakaway and tank. I have no reason, therefore, to conclude that an appropriately sized soakaway and tank would be inappropriate in principle. The appellant has argued that drainage is a technical issue that can be dealt with in a number of ways and could be adequately addressed by an appropriately worded planning condition. It is not unusual for such matters to be subject to conditions. However, in order for this to be considered reasonable in the context of the National Planning Policy Framework² (the Framework), I consider that the condition must be able to be discharged in an acceptable manner.
8. The submitted plans indicate that the soakaway and tank would be to the front of the dwelling. However, the infiltration test report suggests that this location may not be appropriate. The officer's update report to the planning committee states that following receipt of the test information that particular plan would not form part of any 'approved' plans. The implication of this is that the proposed solution would not be workable and that the soakaway would have to be to the rear of the house. However, as this should not be within 5 metres of the building, it is unclear how this can be achieved in the space between the rear of the dwelling and the edge of the appeal site. This raises significant

¹ Selby District Core Strategy (October 2013).

² See paragraph 206

questions about whether there would be a way of providing an appropriate solution.

9. Moreover, even if there were to be a way of providing the soakaway and/or tank to the rear of the dwelling, there is no information demonstrating that this can be achieved while still maintaining an appropriate level of protection to the oak tree's root system. The appellant has suggested that the arboricultural statements highlighted no concerns about drainage measures. However, the only reference to this in the appellant's report is a recommendation that the soakaway is placed under the car parking area to the front of the house (i.e. away from the tree). The Council's report does not appear to address the issue of drainage at all. These documents do not, therefore, provide me with the necessary level of comfort.
10. I recognise that the IDB did not object to the development, subject to conditions, but there is nothing in their responses to suggest they took the RPA of the oak tree into account when coming to their conclusion. I have also had regard to the appellant's comments that the owners of Yew Tree House would be able to provide additional land if necessary. However, there is no guarantee this would provide a workable solution and there is no clear proposal before me at this time.
11. If no workable solution is available, then there can be no guarantee that the site is capable of being adequately drained. The appellant's evidence in this regard is somewhat vague and does not persuade me that the imposition of a condition would be appropriate in the context of what is a relatively constrained site with limited options for providing a solution.
12. In conclusion on this matter, I find there is insufficient evidence that adequate arrangements for disposing of surface water can be achieved. There would, therefore, be conflict with CS policy SP15 insofar as it cannot be certain that the development could be made safe from flooding. I agree with the appellant, however, that there would be no conflict with CS policy SP16 or paragraph 95 of the Framework, which are not directly applicable to the issue of surface water drainage.

Character and appearance

13. As noted above, there is a mature oak tree outside the appeal site, but right up to the boundary edge. This is not subject to a Tree Preservation Order (TPO), but arboricultural reports from both the appellant and Council suggest the tree has some amenity and ecological value. The tree is visible from the dwellings in the immediate vicinity of the site and can also be seen through the access, above the garage. It forms part of a fairly dense collection of different types of tree that provide the boundary to the field to the rear of the site. The tree contributes to the verdant and pleasant backdrop to the site and the rural character of the village. It is generally in good health, although it has been subject to pruning which has had an effect on its growth. There has been no suggestion by any party that the tree should not be retained. The Council has not identified any other trees of note that would be affected by the development. I saw nothing that would lead me to disagree with their conclusions on this.
14. It is accepted that the development would extend over the root protection area (RPA) of the oak tree. To address this, a pile and concrete raft foundation

system has been proposed. While the Council's reason for refusal states that the proximity of the dwelling to the tree would damage its roots, their appeal statement suggests that they are satisfied the house could be constructed without harm to the tree. Their concerns appear to relate more to the risk arising from any effect on the living conditions of future occupants. I have received no other substantive evidence to suggest that the foundation system proposed would not be capable of providing sufficient protection and thus I see no undue risk arising in this regard.

15. The tree would be around 4 metres from the rear of the dwelling. The proximity of the tree, combined with its height, would clearly be a prominent feature from rear windows and the garden. This would have some effect on the outlook of the occupants from some rear facing windows. However, the tree is over to one side of the site and the remainder has a relatively open outlook across fields, which would mitigate this to an extent. The siting of the tree would not have any effect on direct sunlight entering the windows or garden area but would be likely to have some limited effect on daylight penetrating the space.
16. I have little doubt that this would lead to pressure to periodically prune the tree. However, the existing evidence of pruning suggests that this practice would continue with or without the development in place. I also have no reason to assume that the frequency of the pruning would increase as a result of the development. Neither arboricultural report provided suggests that appropriate pruning of the tree would pose any risk to its long term health. Therefore, while the pruning of the tree would continue, there is insufficient evidence to conclude that there would be any undue risk to the long term health of the tree by reason of its proximity to the dwelling or proposed foundation system. As such, there would be no resulting harm to the character and appearance of the area.
17. As the site is within the ARCA, I am required to give special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The evidence suggests that the area's significance lies in the two village greens and the pattern of development that has grown around and between them. My own observations would tally with this. Chapel Green is located on the fringes of the village but is clearly an important open space that provides an attractive semi-rural village setting for the buildings that surround it. There appears to be no overarching architectural style in the village. This is reflected in the variety of buildings around Chapel Green which consist of a variety of types, ages and scales.
18. The development would not be prominent from publicly accessible locations, with the only vantage point being through the access itself. This would generally only be visible directly from the roadside or from parts of the green. There would not be a generous amount of space to the sides or rear of the development, but there would be a fairly open and spacious aspect to the front of the house as a result of the wide access and the area given over to parking and amenity space. The development would not, therefore, appear cramped from publicly accessible locations, as the more limited space to the rear of the site would not be readily apparent from this location. The development would also not be hard up against any buildings either to the side or rear and thus would not appear as if it had been squeezed in between or in front of existing dwellings.

19. While the overall amount of garden space would be reduced, there is nothing in the evidence to suggest that rear gardens are an important part of the character of the ARCA. Indeed, even within the vicinity of the site, there is a variety of different garden and plot sizes, including relatively small spaces associated with the adjacent terraced dwellings. The scale and design of the dwelling would not be out-of-keeping with the variety of dwellings in the area and the suggested materials would be sympathetic. The dwelling would generally only be seen in the context of other housing in the area and the site does not provide important views into, or out of the ARCA. The principle of backland development in this part of the village has also already been established by Mill Reef. Moreover, the location of the development behind the row of housing along Chapel Green would not visibly affect the pattern of development around the green or its importance to the character of the ARCA. Therefore, I do not see any harm to the character, appearance or significance of the ARCA resulting from the scale or siting of the development.
20. In conclusion on this matter, I find that the construction of the dwelling, both in terms of the foundation system and proximity, would not cause undue risk to the health or visual amenity of the neighbouring oak tree. Moreover, the design and siting of the dwelling would have only a neutral effect on the ARCA and its setting. As such, it would be seen as preserving its character and appearance. Accordingly, there would be no conflict with saved policy ENV1 of Selby Local Plan³ (LP) or CS policy SP19 which seek, amongst other things, to ensure development is of a good quality of design that takes account of the local character of the area and the potential adverse effect on trees that are important to the character of the area. While not referred to in the Council's decision notice, there would also be no conflict with Core Strategy policy SP18 which seeks to conserve historic assets which contribute to the distinct character of the area.

Living conditions of neighbouring occupants

21. The development would be around 18 metres from Yew Tree House. It would be a similar distance to 3 Chapel Green, which is the end terrace house nearest to the site. Reference is made in the evidence of a 21 metres gap between principal elevations being considered the minimum. However, this standard does not appear to be reflected in any development plan policy and thus I have not given this measurement significant weight.
22. The development would have a greater impact on the outlook of Yew Tree House and No 3 than the existing double garage. The occupants of Yew Tree House currently have a pleasant garden area with some views across open fields to the rear. This would be curtailed by the development. The outlook of the occupants at No 3 may already be limited to an extent by the garage, but the replacement of this with a new dwelling would reduce the sense of openness to an extent. However, while the quality of the existing outlook would be reduced, I am not convinced that the resulting situation would be materially harmful to the living conditions of the occupants of either property. The dwelling would not be an overly tall or imposing structure in its own right and there would still be a sufficient gap to ensure that neither dwelling would be subject to an unacceptable feeling of confinement or oppression. In coming to this conclusion, I have had regard to the limited dimensions of No 3's rear

³ Selby District Local Plan – Part 1 General Policies (February 2005)

- garden. However, I see no reason why the enjoyment of this space should be materially affected by the development.
23. The implementation of the proposed boundary treatments would also provide a satisfactory level of privacy for Yew Tree House and No 3 from the ground floor windows of the development. The only upper floor windows facing either property would be roof lights. These appear to be located relatively high in the roof slope and thus any ability to overlook neighbouring gardens or habitable room would be limited. The dormer windows in the opposite roof slope would provide no harmful vantage points over neighbouring gardens and the only window on either side elevation would be a side kitchen window facing the common boundary with Westfield House. This would provide no opportunities for overlooking. Therefore, I see no unacceptable impact from the development in terms of loss of privacy.
24. The distance between the side of the new dwelling and Mill Reef would be somewhere between 15m and 17m. I have noted the comments made about the ridge height of the development and the large gable that would be within residents' eye-line. However, while I recognise that the outlook from Mill Reef would change, there would be a sufficient gap between the dwellings to ensure there would not be an unacceptable overbearing impact. The house would not be so tall or imposing from this angle to cause material harm to living conditions.
25. The development would cast a shadow into the gardens of Mill Reef and Westfield House at certain times of the day. In terms of Mill Reef, this is likely to be during the morning and in the afternoon for Westfield House. The gardens are unlikely to be subject to such extensive overshadowing, either in terms of timescale or coverage, to materially diminish the enjoyment of the space. It is not unusual for gardens to be subject to some overshadowing and there would be long periods of the day where the development would not have any effect at all. Therefore, there would be no material harm to living conditions as a result of overshadowing.
26. I have had regard to the comments made about the potential for the ridge height of the dwelling to change in relation to the raft foundation system. There is nothing to suggest that any variation from the submitted plans would be significant, could not be controlled or would have any material effect on the impact of the development. This does not, therefore, alter my overall conclusions on this issue.
27. While I recognise that the current outlook and environment which local residents enjoy would be subject to a degree of change, this does not necessarily equate to harm. In my view, the development would not have an unacceptable impact on outlook, overshadowing or privacy. Therefore, there would be no conflict with saved LP policy ENV1(1) which seeks to achieve a good standard of design that takes account of the amenity of adjoining occupiers. While I also see no conflict with CS policy SP19, this policy does not appear to relate directly to the concerns raised in this main issue.

Living conditions of future occupiers

28. The Council's decision notice and evidence makes reference to the lack of amenity space for a dwelling of this size and this is a concern that has been raised in detail by a number of interested parties. There appears to be no

standards within the Council's development plan relating to the scale of garden that should be provided. Nevertheless, ensuring that future occupants of a building have a good standard of amenity is a core planning principle within national guidance. Access to an appropriate level of usable private amenity space is an important consideration in determining whether this objective can be achieved.

29. The main amenity space to the rear of the house would constitute a 3-4m strip of land that would cover the full width of the site. This would be supplemented to a small extent by some usable space to the side of the dwelling (in particular on the Mill Reef side of the house) and a small area of space to the front of the house adjacent to the parking area. While this is not particularly generous, it would still provide a basic minimum of space to meet day-to-day needs of future occupants. It would be sufficient to provide space for sitting out, drying washing and storage (which could also be achieved to the side of the dwelling). The garden would have a reasonable outlook across an open field and the proximity of the oak tree would not result in any restriction on the use or enjoyment of the space.
30. Interested parties have noted that the rear garden space would be in shade for much of the day. However, this has little bearing on whether sufficient usable space has been provided. Neither would this result in the garden becoming a particularly unattractive space or have any tangible impact on the living conditions of the occupants.
31. I do not find, therefore, that the amount of space provided would lead to an unacceptable standard of accommodation for future occupants. The Council have referred to LP policy ENV1(1) in their decision notice but this refers only to the effect on the amenity of adjoining occupiers and is not applicable here. They also highlight CS policy SP19 but this does not address issues of living conditions directly. However, paragraph 17 of the Framework is clear that providing a good level of amenity to future occupiers is a core planning principle. Accordingly, I see no conflict with the Framework in this regard.

Other matters

32. Interested parties have raised a number of other concerns with the development not cited as reasons for refusal by the Council, in particular relating to highways and archaeology. As I have found against the development on one of the main issues, it is not necessary for me to explore these matters further.

Conclusion

33. I have found that the dwelling itself would preserve the character and appearance of the ARCA and would not have an unacceptable impact on the living conditions of either existing or future occupiers. However, I remain concerned that the evidence relating to flooding and drainage is insufficient for me to be confident that an acceptable solution can be found, or that any solution found would not harm the neighbouring oak tree. This would be at odds with the requirements of the development plan. As a result, I conclude that the appeal should be dismissed.

S J Lee INSPECTOR