
Appeal Decision

Site visit made on 20 December 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 30 March 2017

Appeal Ref: APP/N1025/W/16/3157072

2A Kenilworth Drive, Ilkeston, Derbyshire DE7 4FJ

- 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 Tony Webster against the decision of Erewash Borough Council.
 - The application Ref ERE/0316/0034, dated 9 March 2016, was refused by notice dated 22 April 2016.
 - The development proposed is the erection of a detached three bedroom dwelling.
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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 that issued on 26 January 2017.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached three bedroom dwelling at 2A Kenilworth Drive, Ilkeston, Derbyshire DE7 4FJ in accordance with the terms of the application, Ref ERE/0316/0034, dated 9 March 2016, subject to the conditions in the attached schedule.

Preliminary Matter

2. The appellant has submitted a plan illustrating the existing first floor layout of 6C Kenilworth Drive and details in relation to the construction of the blocked up opening. The Council have had the chance to comment on this information. I am satisfied that no one would be prejudiced by my consideration of these details.

Main Issue

3. The main issue is the effect on the living conditions of the future occupiers of the proposed dwelling with particular regard to privacy.

Reasons

4. The appeal site is adjacent to 2 dwellings recently constructed by the appellant. It contains a double garage that is in a dilapidated state. Due to the topography the site is at an appreciably lower level than the adjacent dwelling, 6C Kenilworth Drive (No 6C). The proposed dwelling would be 2-storey but part of the rear elevation would have a catslide roof down to one storey. It would be located closer to Kenilworth Drive than No 6C. The rear elevation of the dwelling would face the rear elevations of dwellings on Ladywood Road.
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5. Both main parties have referred to an appeal decision on this site.¹ The Inspector in that appeal concluded that *"the proposal would result in an unacceptable degree of overlooking and loss of privacy for future occupiers of the new dwelling from Plot C. The occupants of Nos 24 and 26 Ladywood Road would similarly experience a significant loss of outlook and privacy from the proposed dwelling."* I have not been provided with the full details of that scheme but the Council's Officer Report states that the design of the dwelling had been changed to incorporate the cat slide roof and the dwelling would be set further forward on the site to allow a greater separation distance to the rear.
6. In relation to this appeal the issue of overlooking and loss of privacy relates to a side facing window at first floor level at No 6C (Plot C as referred to by the previous Inspector) overlooking the garden to the proposed dwelling. However, I noted at my site visit that this window has been bricked up. The Council considers that as there is extant planning permission for this window it could be opened up in the future. This constitutes the fallback position.
7. The appellant has stated that he has altered the layout of the first floor of No 6C to enable the bricking up of the window. The submitted first floor layout for No 6C indicates that a dividing wall between 2 bedrooms at the rear of the property has been removed. As such the occupants of the enlarged bedroom would experience the same outlook as approved in relation to the bedroom on the western side of the dwelling.
8. Furthermore, the appellant has confirmed that the opening has been blocked up using bricks, blockwork and insulation to match the original construction and that the opening was finished internally with plasterboard and skim. As such, the reopening of the window would require appreciable expense and disturbance and the enlarged bedroom has alternate sources of light and outlook. Consequently, I consider that it is unlikely that the window would be reopened and as such this limits the weight that I can attach to it as a fallback position.
9. Taking into account all of the above, the side facing window at No 6C has been blocked up and it is unlikely that it would be reopened. As such, the living conditions of the future occupiers of the proposed dwelling with particular regard to privacy would not be harmed. It follows that the proposal would comply with saved Policy H12 of the Erewash Borough Local Plan which requires, amongst other things, an acceptable standard of privacy within private garden areas.

Other Matters

10. Local residents object to the proposal on a wider basis, including in respect of the effect of the proposal on daylight, outlook, privacy, fire risk, noise and disturbance. They also raised concerns in relation to the builder not complying with previous planning permissions, the standard of design and the maintenance of adjacent boundary lines and garages. These did not form part of the Council's reasons for refusal.
11. In relation to the living conditions, with particular regard to outlook and privacy of the neighbouring occupiers at 24 and 26 Ladywood Road I viewed the appeal

¹ APP/N1025/W/15/3012009

site from the garden of No 26 at my site visit. The dwelling would be at a greater separation distance to that considered in the previous appeal on this site. Furthermore, the bedroom rooflights would be around 1.7m above the floor level of the room. The Council's Officer Report states that the proposal would not result in significant harm to the amenity levels that occupiers of these dwellings currently enjoy by reason of overlooking or the development being overbearing. I have no reason to disagree with these findings.

12. I am satisfied that all of the matters mentioned above would not result in a level of harm which would justify dismissal of the appeal. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

Conditions

13. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the National Planning Policy Framework. In the interests of conciseness and enforceability the wording of some of the Council's suggested conditions have been amended.
14. I have imposed a condition specifying the relevant drawings as this provides certainty. In the interests of character and appearance, it is necessary to impose a condition requiring details of the external materials. Highway conditions including provision of access, visibility splays and parking areas are necessary to ensure highway safety.
15. To reduce the risk of land instability and mining related hazards to the future users of the land and neighbouring land are minimised I consider that a site investigation condition is necessary.
16. I am not satisfied that the extent of permitted development rights that the Council recommends to be removed from the dwellings is reasonable or necessary as no detailed justification is provided and it is unlikely that new windows will be inserted in the side walls. However, it is appropriate to remove permitted development rights for the dwelling relating to Classes A, B, C and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development Order) 2015. This condition is necessary to preserve the living conditions of the neighbouring occupiers due to their proximity to the proposal, whilst preventing over development and loss of amenity space to the dwelling.
17. The PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In the case of the pre-commencement conditions, I consider that resolution of the matters specified to be so fundamental to the development that it would otherwise be necessary to refuse the application.

Conclusion

18. For the reasons given above, and having regard to all other matters raised I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR

Attached – Schedule of Conditions

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: site location plan and MT/TW/014/031/02 - REV B.
3. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4. Prior to the occupation of the dwelling hereby permitted, the existing vehicular access shall be modified in accordance with the approved plans, laid out, constructed and provided with the maximum achievable visibility splays. The land in advance of the visibility splays shall be maintained throughout the life of the development clear of any object greater than 0.6m in height relative to the adjoining nearside carriageway channel level.
5. The dwelling hereby permitted shall not be occupied until space has been provided within the application site in accordance with the approved plans for the parking and manoeuvring of residents' vehicles, laid out, surfaced and that space shall thereafter be kept available at all times for those purposes.
6. No development shall take place until a site investigation of the nature and extent of any land instability has been carried out in accordance with a methodology which shall have previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development takes place. If any land instability issues are found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development takes place.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 2015 (or any order revoking and re-enacting that Order with or without modification), no building, structure or alteration permitted by Classes A, B, C or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage of the dwelling hereby permitted.