

Appeal Decision

Site visit made on 22 May 2017

by B Bowker Mplan MRTPI

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

Decision date: 5 June 2017

Appeal Ref: APP/Y2003/W/17/3170994

Land adjacent to 30 High Street, Burton upon Stather, Scunthorpe, North Lincs DN15 9DE

- 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 Richard Neish against the decision of North Lincolnshire Council.
 - The application Ref PA/2016/1777, dated 21 July 2016, was refused by notice dated 8 February 2017.
 - The development proposed is to erect a detached 4 bedroom house with detached garage.
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Decision

1. The appeal is allowed and planning permission is granted for a detached 4 bedroom house, at land adjacent to 30 High Street, Burton upon Stather, Scunthorpe, North Lincs DN15 9DE, in accordance with the terms of the application Ref PA/2016/1777, dated 21 July 2016, subject to the conditions in the attached schedule.

Preliminary Matter

2. The description of development used above is taken from the planning application form. It refers to a detached garage, yet the submitted plans before me do not include it. Therefore, in the interests of clarity, my determination of the appeal is based on the four bedroom house only. Paragraph 1 above has been amended accordingly to reflect the permission granted.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbours residing at surrounding properties with particular reference to light, outlook, privacy, and noise and disturbance.

Reasons

4. The appeal site is located in an area predominantly residential in use and comprises the side garden of 30 High Street. No 30 is located to the south of the site. Nos 22 and 24 High Street and Nos 27 and 25 Norfolk Avenue are to the north. The access drive to the dwelling would be between the side of No 2 Breydon Court and rear of No 25 Norfolk Avenue.
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5. An appeal was allowed in June 2009¹ for residential development at the site. This permission has lapsed but the relevant local policies, site surroundings and main issue of neighbouring living conditions remain similar. The 2009 appeal involved two detached two storey dwellings, one of which was closer to the properties along the northern boundary of the site than is currently proposed.
6. During my site visit, I observed that the north (side) elevation of No 30 contained windows serving a kitchen, utility and living room. However, as was the case in the 2009 appeal decision, the principal windows for each room are to the front and rear of No 30. Whilst the proposed dwelling would include a first floor balcony, it would be set further away from No 30 than was the case in the previous appeal and would face its side elevation. In this respect, No 30 would retain an adequate outlook and levels of privacy.
7. Neighbours at No 22 High Street are concerned about the effect of the proposal on their living conditions, with particular reference to outlook, privacy and levels of light. The south facing elevation of No 22 contains a number of principal windows at ground and first floor, and its garden area is adjacent to the site. Nos 22 and 24 combined form an 'L' shaped building. The depth proposed for the two storey rear gable aspect would be about 6.5m and therefore greater than the 3m depth of the rear aspect in the previous scheme. The side elevation of the proposed dwelling would be more than 10 metres from the rear elevation of No 22.
8. I agree with the Inspector that an unacceptable loss of outlook occurs when a new building at close quarters would result in a significant proportion of the sky being obstructed from a particular vantage point. In the previous decision, the Inspector identified the separation distances of 8m and 10m between the elevations of Nos 22 and 24 and the proposed side elevation as a factor that would ensure neighbouring outlook remains. I have no reason to doubt that this assessment took into account local topography, a matter I have considered in determining this appeal.
9. Whilst the proposal would extend further along the rear elevation of No 22, the separation distance would remain greater than 10 metres. In this context, the 30 degree angle test applied to the previous proposal to ascertain the effect on daylight would equally apply to the proposal before me. In addition, as no habitable room windows are proposed to the first floor of the side elevation, and taking into account the cill height of the proposed ground floor living room window, no loss of privacy would occur for residents to the north of the site. In such circumstances, the proposal would not unacceptably harm the outlook and levels of light and privacy for neighbours at Nos 22 and 24.
10. The proposed access drive, including parking and turning areas, would be close to the rear low boundary wall of 27 Norfolk Avenue. No 27 has a rear garden and bedroom windows at its rear elevation. However, the proposal is of a modest scale and therefore would not generate vehicular movements or pedestrian activity to an extent that would result in an unacceptable loss of privacy or disturbance by car headlights, security lights or by noise for neighbours residing at No 27.
11. The submitted plans show an intervening area between the proposed driveway and No 27. A condition requiring the approval of boundary treatment details

¹ APP/Y2003/A/09/2099337

would ensure that sufficient vegetation is planted near the site boundary with No 27 to reduce the effect of any infrequent occurrences of light disturbances. Taking into account the existing outlook from the rear of No 27 and the separation distances involved, this could be achieved without harming the outlook or levels of light for neighbours at this property.

12. I saw during my visit that the access would involve part of the grass garden area at No 2 Breydon Court. This point of access also formed part of the 2009 proposal. No habitable rooms at No 2 would abut the proposed access and the boundary treatment and separation distances involved would prevent any disturbance by virtue of vehicular noise and light for neighbours at No 25 Norfolk Avenue. Concern is also raised regarding noise and disturbance by residents at Breydon Court. However, the number of vehicular movements associated with one dwelling in an established residential area would be modest. In addition, taking into account the separation distances involved, the proposal would not have a harmful effect on the privacy and living conditions of neighbours at Nos 37 - 41 High Street.
13. Therefore the proposal would not have a harmful effect on the living conditions of neighbours residing at surrounding properties with particular reference to light, outlook, privacy, and noise and disturbance. Consequently the proposal would meet the requirements of policies H5 and DS1 of the North Lincolnshire Plan. Combined, these policies seek to ensure development does not result in an unacceptable loss of amenity for existing residential properties and neighbouring land uses.

Other Matters

14. The site is located in the Burton upon Stather Conservation Area (BSCA) and concern has been raised regarding the effect of the proposal on it. Whilst the Council have not raised an objection in this respect, I have a statutory duty to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area. I agree with the Council's assessment on this matter and consider that the design proposed would be sympathetic to the BSCA. Furthermore, open space to the sides of the dwelling would retain views of surrounding properties, including Nos 22, 24 and 30 High Street.
15. Concerns have been raised regarding the potential of a precedent by allowing a pedestrian access at the High Street. However, the access would be modest in scale and thus preserve the BSCA. In addition, this decision would not prevent the Council from refusing development that would harm the BSCA. Moreover, 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.
16. Concern is raised regarding highway and pedestrian safety, with reference to road conditions, parking capacity in the vicinity, the construction process and emergency and refuse vehicle access. However, the above highway and pedestrian safety matters were not included as a reason for refusal by the Council and the Highway Authority raise no objection to the proposal. Taking into account its modest scale, the proposal would result in a limited increase in vehicular activity and would involve a relatively short construction period. In addition, as the Council note, any damage to the highway would be subject to separate regulations.

17. Consequently, dismissing the appeal on highway safety grounds would be unjustified. The Highway Authority recommend the submission of a Phased Traffic Management Plan and a suitably worded condition to this effect would ensure satisfactory construction access and management details are provided prior to the commencement of development. This condition would preserve highway safety, the living conditions of adjoining occupants and address neighbour concerns regarding site access arrangements during the construction period.
18. Based on the evidence before me, dismissing the appeal on the grounds of their being similarly sized properties available to buy in the vicinity would not be justified. Nor would the effect of the proposal on local services, sewer capacity or the availability of local employment be sufficient justification to dismiss the appeal.
19. I note comments made regarding ownership and a right of way. However these are private legal matters and a grant of planning permission would not negate or supersede any private legal rights relating to land ownership.

Conditions

20. The conditions in the attached schedule are based on those suggested by the Council. Where necessary, the conditions have been amended in the interests of clarity and precision as required by Planning Practice Guidance.
21. I have imposed a condition specifying the relevant drawings to provide certainty. Conditions requiring window and material details are necessary in the interests of the BSCA.
22. A condition requiring compliance with the submitted Arboricultural Implication Assessment is necessary to protect tree health and the character and appearance of the surrounding area. As the assessment recommends a cellar confinement system, the suggested condition relating to a non-dig drive is unnecessary. A condition relating to boundary treatment details is necessary to preserve the living conditions of neighbouring residents.
23. A condition requiring the approval of a Phased Construction Traffic Management Plan is necessary based on my reasoning above. To preserve highway safety, a condition requiring completion of the vehicular access and parking and turning areas prior to the occupation of the dwelling is necessary. A condition relating to contamination is necessary based on the Council's Environmental Health Officer comments.
24. As separate regulations control matters relating to surface water drainage and loose materials on the highway, these conditions are not necessary.

Conclusion

25. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

B Bowker
INSPECTOR

Schedule of Conditions

- 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: RN/16/01, RN/16/02, RN/16/02A, RN/16/03 and RN/16/04.
- 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) No development shall take place until detailed drawings, at a scale of 1:20, of the proposed timber windows and external doors and have been submitted to and approved in writing by the local planning authority. The window details shall show sections, opening arrangements and glazing bar patterns. Details of the proposed materials and colour finishes shall be included. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected/planted. The boundary treatment shall be completed/planted prior to the first occupation of the dwelling hereby permitted. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 6) The development hereby permitted shall be carried out in strict accordance with the method and extent of tree protection measures detailed in the Arboricultural Implication Assessment produced by Arb Consultants Ltd dated October 2016, including the method and extent of tree protection identified on drawings Sht-2 and Sht-3.
- 7) The dwelling hereby permitted shall not be occupied until the vehicular access to it and the vehicle parking and turning space(s) serving it have been constructed in accordance with the approved details and, once provided, these areas shall be permanently retained for the intended purposes.
- 8) No development shall take place, including any works of demolition, until a Phased Construction Traffic Management Plan has been submitted to, and approved in writing by the local planning authority. The Plan shall provide details of site access arrangements, all associated traffic movements, including delivery vehicles and staff/construction movements, any abnormal load movements, contractor parking and welfare facilities, storage of materials and traffic management requirements on the adjacent highway.

The approved Phased Construction Traffic Management Plan shall be adhered to throughout the construction period for the development.

- 9) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within an agreed timescale following the report's completion and approval in writing by the local planning authority.

- **End of schedule** -