
Appeal Decision

Site visit made on 9 May 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 12 June 2017

Appeal Ref: APP/R1038/D/17/3166479

New House, Boleshill, Calow S44 5UZ

- 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 Ms S Bates against the decision of North East Derbyshire District Council.
 - The application Ref 16/00908/FLH, dated 1 September 2016, was refused by notice dated 1 November 2016.
 - The development proposed is the retention of and alterations to former bungalow to provide domestic garage and workshop with access solely from the existing driveway to New House.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. A previous planning permission granted in 1989 relates to the construction of a replacement dwelling on the site. I am led to understand that this permission was implemented in 1992. The existing building which is the subject of this appeal should have been demolished in order to comply with Condition 2 attached to that planning permission. The building has not been demolished and as such Condition 2 has not been discharged. Whilst these matters do not form a specific reason for refusal, they are a material consideration in this appeal. As such, I have given these matters moderate weight in my decision making and I have assessed the appeal on that basis.
3. Policy BE1 of the North East Derbyshire Local Plan (LP) deals with general design principles. From what I have seen and read, I note that this policy is not referred to in the Council's delegated report or in the recommendation to refuse the proposal. As a result, given the matters at issue and having considered the evidence before me, I find Policy BE1 to be not directly relevant to the main issue. Therefore, I have not made any further reference to it in determining this appeal.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.
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Reasons

5. The appeal site is outside of the Settlement Development Limit for Calow. The area is characterised by a mix of dwellings of differing sizes, types and styles within a small linear settlement in a semi-rural setting. New House, the host property, is set back from the public highway and sits within a spacious plot. The former bungalow, which is the subject of this appeal, is adjacent to the highway but screened by mature trees and hedgerows and an overgrown garden. There are two small terraces of dwellings and some detached single and two storey properties on the opposite side of the road and to the north of the appeal building. To the west are large one and two storey dwellings and to the south and east lies the private garden area of the appellant's dwelling.
6. Policy GS1 of the LP states development will have regard to preserving or enhancing the environment and contribute towards a sustainable pattern of development. Policy GS6 of the LP states that development in the countryside will only be permitted where, amongst other matters, it does not require new or improved infrastructure provision. Policy GS7 of the LP relates to the change of use and conversion of existing buildings which does not have an adverse effect on the character of the area.
7. In policy terms, the appeal building is in the open countryside where development is to be strictly controlled. It is also considered to be in an unsustainable location for new development. Notwithstanding this, the appellant states that the proposed garage and workshop would be incidental and ancillary to the existing dwelling and would be within the domestic curtilage of that property. Therefore, in the appellant's view, it would be acceptable. However, I find that the size, form and position of the proposal in relation to the host property would be substantial and disproportionate for such ancillary purposes. I note that the building is about 17 metres from the appellant's dwelling and it seems unlikely to me that the proposed garage and workshop would be used in preference to the existing double garage adjacent to New House.
8. The appeal building is substantially forward of its host dwelling and due to its external appearance being largely unaltered by the proposal, it would appear as a separate entity to the host property rather than ancillary to it. I find that due to its size, form, design, position and distance from the existing dwelling the proposed development would appear as a separate dwelling to New House and the retention of the appeal building would represent a prominent intrusion into the countryside. Furthermore, the proposal would require new infrastructure in the form of a new driveway to connect to the existing track which provides access to New House from the public highway. This would have an adverse effect on the semi-rural nature of the site and the character and appearance of the locality and would be contrary to Policy GS6 of the LP.
9. The appellant argues that the proposal would secure the restoration of the rundown building and, as it would not involve any significant external alteration, it would fit in well with its setting. Furthermore, a new landscaping scheme is proposed and could be secured by condition to ensure that the impact of the proposal would be limited. In addition, it would provide additional storage and garaging facilities for the appellant within the curtilage of their existing dwelling.

10. Notwithstanding this, it is evident that the building should no longer be in situ and is in breach of an extant planning condition. This is a material consideration to which I give significant weight. Therefore, I give limited weight to improving the appearance of the building. Whilst much of the building would be screened from public view, its size, mass and position forward of the established building line and the existing dwelling and its proximity to the public highway would have an adverse impact on the semi-rural character and appearance of the site and wider area.
11. The significant additional space over and above that provided by the appellant's existing double garage would be a benefit for the appellant. However, in the absence of any substantive evidence of need or justification for this additional space before me, I am not persuaded that the proposal would meet an alleged need or be ancillary to the host property. Therefore, having had regard to all of the above, I find that the benefits of the proposal would be significantly outweighed by the harm I have identified.
12. Consequently, I conclude that the proposed development would have a detrimental impact on the character and appearance of the surrounding area. Therefore, it would be contrary to Policies GS1, GS6 and GS7 of the LP. Amongst other matters, these policies seek to ensure that development is strictly controlled in the countryside and has no detrimental impact on the character or appearance of its surroundings.

Other considerations

13. Condition 2 of the 1989 planning permission Ref: 389/250 required the demolition of the appeal building. Furthermore, I note the Council indicates that there is a signed Section 106 agreement relating to that permission which prevents further applications for dwellings being submitted on the site for a period of 80 years. This signed agreement is not before me. Nonetheless, I note that the appellant does not dispute that such an agreement exists. In my view, this would preclude the proposed domestic development on the appeal site.
14. Furthermore, the Council states that on 1 September 2016, the appellant confirmed that Condition 6 of that 1989 approval, Ref: 389/250, relating to the permanent closure of direct access to the building from the public highway, would be complied with. Therefore, it seems to me that if it is considered necessary to state compliance with Condition 6 attached to the 1989 approval, then it is reasonable that compliance with the other conditions, including Condition 2, should be pursued.
15. The appellant argues that the proposal would be domestic development within the curtilage of a dwelling which is generally acceptable and can be undertaken as permitted development (PD). Therefore, the appellant indicates that were the appeal dismissed, a building of similar size could be erected elsewhere within the curtilage of New House under PD. I accept that PD is a route which the appellant may wish to take. Notwithstanding this, I find that such an undertaking would likely result in a less conspicuous siting of the proposed garage and workshop. Furthermore, I note that the building under PD would likely have a lower ridge height than the appeal building, as proposed. Therefore, given that the appeal building should be removed under Condition 2, I find that the PD approach would likely have a lesser impact on the character and appearance of the area than the proposed development.

16. It is not in dispute that the proposal would be contrary to Condition 2 of the 1989 approval. As such, if I were to allow the appeal, it would cast doubt on the validity of the planning permission granted for New House, the appellant's existing dwelling. Notwithstanding this, given my conclusion on the substantive issue, my consideration of these matters is not determinative in this case and does not alter my overall decision.

Conclusion

17. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR