
Appeal Decision

Site visit made on 27 June 2017

by Michael Moffoot DipTP MRTPI DipMgt MCMI

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

Decision date: 27 July 2017

Appeal Ref: APP/E2734/W/17/3170713

Land to rear of Skellcross House, Ripon, North Yorkshire HG4 1NL

- 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 & Mrs Wansborough against the decision of Harrogate Borough Council.
 - The application Ref: 6.31.1166.C.FUL, dated 22 July 2015, was refused by notice dated 28 October 2016.
 - The development proposed is residential development for two, two storey dwellings and two single garages, access drive & hardstandings & change of use.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr & Mrs Wansborough against Harrogate Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:
 - (i) the effect of the proposed development on the living conditions of neighbouring occupiers, with particular reference to outlook, privacy, daylight and sunlight and noise and disturbance;
 - (ii) the implications of the proposal for flood risk having regard to national guidance for the prevention of flooding; and
 - (iii) the implications of the proposal for ground stability on the site.

Reasons

Living conditions

4. The appeal site comprises a parcel of overgrown land enclosed on three sides by two-storey dwellings and flats of varying age, design and scale. Access to the plot from Fishergreen¹ is via a narrow lane between housing and industrial premises which also provides a pedestrian link to Skelldale Close.
5. The northern and western boundaries of the site are generally enclosed by hedging and mature trees adjoin the southern boundary. The proposed two-

¹ Also referred to as Fisher Green

storey dwellings with accommodation in the roofspace would be set at an angle within the site with the principal elevations having a south-east to north-west orientation. Single garages would be located in the corner of each plot accessed via a shared drive off the lane.

6. Amongst other things, saved Policy HD20 of the *Harrogate District Local Plan* (2001) requires new development to respect the privacy and amenity of nearby residents and occupiers of adjacent buildings. Policy SG4 of the *Harrogate District Local Development Framework: Core Strategy* (2009) includes a requirement for development proposals to protect and where possible enhance visual, residential and general amenity. The policies are consistent with the *National Planning Policy Framework* (the Framework) which states that the planning system should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
7. In addition, whilst it deals with domestic extensions and alterations I consider it appropriate to apply the principles promoted in the Council's *House Extensions & Garages Design Guide* (2005) to the appeal proposal.
8. In order to protect neighbours' amenity the Design Guide advocates minimum distances between new development and surrounding properties. The proposed layout would comply with the stipulated separation distances, and as such the outlook from neighbouring properties would not be materially compromised nor would residents' privacy be adversely affected. There would be some loss of daylight and sunlight to adjoining gardens to the north and west of the site, but it would be modest and would not demonstrably harm neighbours' living conditions.
9. Whilst vehicles would pass in relatively close proximity to windows in Skellcross House, such trips would be infrequent and would not give rise to appreciable noise and disturbance for the occupiers of the property. The temporary effects of construction noise and disruption are common to all new development and do not justify dismissal of the appeal; they can be reasonably restricted by condition to normal working hours.
10. For these reasons, I conclude on the first issue that the appeal proposal would not materially harm the living conditions of neighbouring occupiers. As such, there would be no conflict with Policy HD20 of the Local Plan and Policy SG4 of the Core Strategy.

Flood Risk

11. The site is located within Flood Risk Zone 2. The Framework seeks to direct new development away from areas at highest risk of flooding, but where development is necessary it should be made safe without increasing flood risk elsewhere. Consistent with this objective, Policy EQ1 of the Core Strategy includes a requirement for all new development to seek to minimise flood risk.
12. The proposal was accompanied by a Flood Risk Assessment (FRA) which the Environment Agency (EA) advised did not accord with requirements set out in the *Planning Practice Guidance* (PPG). In particular, the FRA failed to investigate all sources of flooding and provide adequate mitigation and suitable surface water discharge measures. The EA also set out additional measures and information required to overcome its objection.

13. A subsequent Supplementary Flood Risk Assessment (SFRA) provided additional details regarding flood risk from the River Ure, ponding in the vicinity of the site and measures for flood proofing the proposed dwellings. It indicated that foul water would discharge to a nearby pumping station and surface water would drain to a surface water sewer at no greater than existing greenfield run-off rates utilising a sealed underground storage tank which would not be affected by a high water table. The SFRA went on to advise that floor levels for the dwellings would be set at 20.950m AOD, flood proofing measures would be incorporated into the design, surface water run-off at greenfield rates would include an allowance for climate change, rainwater harvesting tanks would reduce the volume of run-off and future residents would be encouraged to sign up to the EA's 'Flood Warning Service'.
14. As a result the EA removed its earlier objections to the proposal subject to a condition to ensure that the development is undertaken in accordance with the FRA and SFRA, including the proposed mitigation measures in relation to surface water run-off, finished floor levels and flood proof/resilient construction techniques. I also note that the Council's Land Drainage Engineer did not object to the proposal.
15. I have considered very carefully the concerns of some local residents regarding the implications of the proposal for flood risk in the area, including misgivings about the veracity of the SFRA. However, given the lifting of the EA's objections to the proposal and in the absence of compelling technical evidence to counter the findings of the FRA and SFRA, together with the measures proposed to address flood risk via condition, I conclude that the proposal would not pose a risk from flooding. Accordingly, I find no conflict with local and national policies which seek to prevent development that would be at risk from flooding.

Ground Stability

16. Saved Policy A7 of the Local Plan states that development on land suspected of being unstable will not be permitted unless it is demonstrated either that there is no foreseeable instability or that the effects of such instability can reasonably be overcome.
17. The appeal site lies within 'Gypsum Area C' in the Local Plan where gypsum is present and susceptible to dissolution and the area may be susceptible to local subsidence hazard. In such areas, Appendix XI states that a ground stability report prepared by a 'competent person' will normally be required before proposals for buildings, or those relating to changes of use involving increased exposure of the public to a known risk of subsidence, can be determined. It adds that in most cases the report would need to be based on a geotechnical desk study and site appraisal followed up by a programme of ground investigation designed to provide information needed for detailed foundation design, unless adequate information from previous boreholes on the same site is available.
18. The main parties advise that due to the expense of undertaking a ground stability report (GSR), and provided that all other aspects of a proposal are acceptable and it is minded to grant permission, the Council's normal approach is to delegate approval to the Chief Planning Officer subject to submission of a satisfactory GSR.

19. A GSR accompanies the appeal. It advises that prior to any development commencing further investigation into the site should be undertaken in the form of shallow trial pits and boreholes. The appellants submit that as such investigations carry a significant cost it is not appropriate to undertake these without first having a resolution as to whether the proposal is acceptable in all other respects, after which they would be happy to undertake the works needed. Reference is also made to the report's recommendations which include reinforced raft foundations details which, it is submitted, could be dealt with by condition.
20. No ground investigation involving shallow trial pits and boreholes has been undertaken as part of the GSR. Paragraph 13.2 of the document advises that '*Given the nature of Gypsum dissolution the potential for voids to be present beneath the site remains **very high** and consequently further investigation is recommended.*' It goes on to recommend that further intrusive investigation is undertaken to establish the condition of the underlying superficial deposits and bedrock, the results of which will allow for further foundation recommendations to be made.
21. The Ground Stability Declaration Form which forms part of the GSR states that the site history, site inspection and geotechnical desk study information available is inadequate to reasonably assess the stability of the site. It is clear that satisfactory ground stability is a crucial and integral to the proposal. On the basis of the information before me I do not consider that the necessary further investigation into ground stability should be dealt with by way of a planning condition. Such a condition would fail the test of reasonableness because, if a further report found the site to be unsuitable, a condition would negate the benefit of the planning permission.
22. For these reasons, I conclude that the appeal should fail.

Other Matters

23. Although the proposal would make a modest contribution to housing in the District where there is a shortfall in the five-year supply of housing land required by the Framework, this does not significantly and demonstrably outweigh the harm I have identified above and which has led me to dismiss the appeal.
24. Whilst not an issue for the Council or highway authority, local residents have raised concerns regarding highway and pedestrian safety. Fishergreen has informal passing places and is of adequate width and alignment to accommodate the modest amount of traffic generated by the proposed development. Parking provision within the site would obviate the need for parking on the lane to the front and would maintain the pedestrian and emergency route to Skelldale Close. Traffic associated with the development, including construction, delivery and refuse vehicles, would be slow moving and would not prejudice the safety of pedestrians, cyclists and other road users passing along the lane and Fishergreen. Access for fire service vehicles would comply with guidance in *Manual for Streets*.
25. Reference is made to a visually cramped development with a sense of enclosure which would constitute over-intensive development at odds with the more spacious grain of the locality and spaces between buildings. However, given the varied form, scale, disposition and type of development in the locality

the density of the proposed scheme would not amount to overdevelopment of the site.

26. Only one tree on the southern boundary of the site would be felled and new tree planting and landscaping could be required by planning condition to compensate and help to integrate the scheme into its surroundings. Any such scheme could also take into account retention of existing boundary hedges.
27. Concern has been expressed regarding loss of wildlife habitat, but the site is not subject to any special protection and this does not constitute a valid reason for dismissing the appeal. Other concerns raised in representations have no bearing on the planning merits of the proposal.

Conclusion

28. Despite my favourable findings on the first and second issues, cogent concerns regarding ground stability lead me to conclude overall that the appeal should fail.

Michael Moffoot

Inspector