
Appeal Decision

Site visit made on 18 July 2017

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

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

Decision date: 10th August 2017

Appeal Ref: APP/J0405/W/17/3174249

Woodlands, 9 Church Lane, Mursley MK17 0RS

- 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 Benjamin Carter against the decision of Aylesbury Vale District Council.
 - The application Ref 17/00105/APP, dated 12 January 2017, was refused by notice dated 9 March 2017.
 - The development proposed is demolition of existing bungalow and erection of replacement house.
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing bungalow and erection of a replacement house at Woodlands, 9 Church Lane, Mursley MK17 0RS in accordance with the terms of the application, Ref 17/00105/APP, dated 12 January 2017, subject to the conditions set out in the attached Schedule.

Procedural matter

2. The owner of No 7 Church Lane states that the hedge to the south-east boundary of their property falls under their ownership while the appellant maintains that it straddles the boundary between it and No 9 and therefore falls to both parties to share control. The matter of which party owns the hedge is a private civil matter and not an issue for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. However, the existence of the hedge is material to my assessment and in the absence of a definitive position, I have proceeded on a precautionary basis that the appellant does not have sufficient control of the hedge to ensure it is retained as part of the development proposal or managed via planning condition. There was also some dispute between the parties over the height of the hedge, which according to their submissions was approximately 2.5 and 3 metres respectively. Based upon my site inspection, the hedge would appear to fall within this approximate range.

Main Issues

3. The main issues are:-
 - the effect of the development on the character and appearance of the area
 - living conditions.

Reasons

4. The appeal site, which lies directly behind No 7 Church Lane, consists of a mature bungalow with attached garage set within a large garden containing several mature trees and hedges. Church Lane is characterised by a range of well-proportioned 1 and 2 storey dwellings of varying ages and architectural styles set on large plots that front onto a narrow highway with no public footway.

Character and appearance of the area

5. The Council, Parish Council and nearby residents have raised concerns that the height and scale of the proposal would be harmful to the character and appearance of the area. Although the proposed dwelling would be considerably larger in scale than the existing bungalow, it would be proportionate to the size of the plot and not appear unduly large or prominent because of the visual relief achieved by its footprint and roof having been divided up into 3 different sections (the main house, the rear projection and the single storey garage). It would be slightly taller than other 2-storey houses close by because it is set on higher ground, but this would reflect the topography of the area and existing varied roofscape. Although it would extend almost the full width of the plot, this would not be out of character with the footprints of other dwellings on Church Lane. Any impact would be further reduced by the lack of public footpaths in close-proximity to the south-east of the site and the scheme being heavily screened from Church Lane by the existing dwelling at No 7.
6. The appeal site and surrounding countryside does not benefit from any local or national landscape designations. However, the National Planning Policy Framework (NPPF) states at para 17 that planning should take account of the different character of areas and recognise that the countryside has an intrinsic character and beauty. I have therefore considered the impact of the proposal on this edge-of-village setting and concluded that because of its proximity to the existing houses on Church Lane, it would not appear isolated from the village settlement pattern or harmful to the character of the area and wider countryside.
7. In view of the above, I have concluded that the proposal would comply with policy GP35 of the Aylesbury Vale District Local Plan (January 2004) which seeks to protect the character and appearance of an area through high quality design.

Living conditions

8. The dwelling would be sited approximately 13-14 metres from the rear garden boundary of No 7 Church Lane and approximately 38 metres from its main rear elevation. The ground level of the appeal site is higher than that at No 7 and its occupants have raised concerns that the proposal would be visually intrusive and overbearing, especially as there is no guarantee that the existing dividing hedge would not die, become damaged or be retained at its current height (due to normal horticultural maintenance). If this did occur, I acknowledge that the new dwelling would be much more visible from the garden of No 7 and its rear elevation windows & conservatory. However, by reason of; (1) the distances involved; (2) the footprint and roof of the dwelling being divided up to give visual relief (see para 5 above); (3) it being unlikely that the existing rear boundary hedge will be removed or drastically reduced in height (see para 12

- below); and (4) the potential for additional landscaping to this boundary, I am satisfied that the new dwelling would not appear visually intrusive and overbearing when viewed from No 7.
9. The Parish Council and nearby residents have also raised concerns about loss of privacy. If the hedge remained in place at an approximate height of 2.5 to 3 metres, it would be possible to see the conservatory and rear elevation windows of No 7 from north-west facing first floor windows of the new dwelling (views which would be assisted by the higher land level of the appeal site). If the dividing hedge was removed or reduced in height, it would also be possible to see its rear garden and patio areas. However, even if there was only a 2 metre high fence at this boundary, I am satisfied that a reasonable degree of privacy to No 7 would remain because of the distance between the first floor windows of the new dwelling and boundary. For the same reasons and because of obscure glazing to the first floor north-east facing windows, I am also satisfied that there would not be any harmful loss of privacy to other neighbouring properties.
 10. The Parish Council and nearby residents have also raised concerns that the proposal would reduce the sunlight and daylight enjoyed by neighbouring properties. I acknowledge that there would be an impact to No 7 because the new dwelling would be positioned directly to the south of it and set on higher ground. However, because of the distances involved, I am satisfied that this would not be unduly harmful. The impact would be even less to Nos 5a and 11 Church Lane.
 11. In view of the above, I have concluded that the proposal would comply with policy GP8 of the Aylesbury Vale District Local Plan (January 2004) which seeks to protect the amenity and living conditions of nearby residents from new development.

Other matters

12. Nearby residents and the Council have raised concerns that the boundary hedge between No 7 and No 9 could be reduced in height as a result of a high hedge complaint or removed as a result of disputes. However, it would be in the interests of all occupants to mitigate any visual impacts and so I would not expect there to be a high likelihood of either of these events occurring. In any case, I have concluded that even if the hedge was removed or significantly reduced in height, that the proposal would still be acceptable.
13. Although the Council and local highway authority has not raised any technical objections in respect of highway safety, I note that nearby residents have. However, as a result of my site inspection I am satisfied that the proposal would allow sufficient visibility for cars exiting the driveway. Further concerns have been raised about damage to the public highway during construction. However, this would be a private civil matter between the appellant and local highway authority.
14. Concerns have been raised by some residents that the proposal would establish an undesirable precedent if allowed. However, I must consider the scheme on its own merits and have therefore given this limited weight in my assessment. Concerns have also been raised over loss of property value. However, the Planning Practice Guidance states that planning is concerned with land-use in the public interest, which does not extend to the protection of purely private

interests such as property value. My attention has also been drawn to a refusal of planning permission for a dwelling nearby. However, this is not directly comparable to the existing proposal as it was not for a replacement dwelling.

15. Further concerns have been raised by residents over noise and disturbance from construction activities and the impact of this upon local livestock. However, the construction works will only be temporary and any significant disturbance can be suitably controlled under environmental health legislation.
16. Concerns have also been raised by nearby residents about the impact on bats. However, the Council's ecologist has not raised any concerns in respect of this matter and I am satisfied that a condition to protect existing trees and hedges will ensure that any impact on biodiversity is minimised.

Conditions

17. The Council has suggested conditions which I have considered in the light of Planning Practice Guidance. I have made some small amendments and consolidated some to avoid duplication and clarify certain details. A condition requiring development to be in accordance with the plans is needed to reflect Planning Practice Guidance. Conditions relating to external materials and finished floor levels are necessary to ensure a high standard of development and protect the outlook of neighbouring occupiers. A condition is also necessary removing permitted development rights for additional windows to protect the amenities of neighbouring occupiers.
18. To protect the character of the area, I consider it necessary for a new tree/hedge belt to be provided adjacent to the dividing boundary between the new dwelling and No. 7 and for the existing trees and hedges on the site to be retained and protected during construction. This has been incorporated into a landscaping/boundary treatment condition, supplemented by another requiring the replacement of any new soft landscaping that dies, becomes diseased or is damaged.
19. The condition requiring development to be carried out in accordance with the approved plans and details will satisfactorily address ecological matters. It is not necessary for the appellant to provide a written ecological statement confirming that the works have been carried out as I have no reason to conclude that they would not be implemented and such monitoring activity is in any case the responsibility of the local planning authority. Given the small-scale nature of the development, I do not consider it necessary to impose conditions controlling construction management as any disturbance can be controlled under environmental health and highway legislation.

Conclusion

20. I have found that the proposal would not cause harm to the character and appearance of the area and living conditions of neighbours. In view of this and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Robert Fallon

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 and details:- Drawing Nos M01 and PD03; the Design and Access statement; the Phase 1 Habitat Survey and Building Inspection for Bats by Bernwood Environmental Conservation Services dated August 2016; the Habitat Suitability Index, January hibernation survey for bats and Badger Sett at No. 5 survey letter by Bernwood Environmental Conservation Services dated 7 January 2016; the Bat surveys report by Bernwood Environmental Conservation Services dated August 2016 and the Fera eDNA Great Crested Newt analysis report dated 6 May 2016.
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall take place until full details of finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved levels.
- 5) No development shall take place until details of hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) a plan showing the position of every tree and hedgerow on the site and on land adjacent to the site that could influence or be affected by the development, indicating which trees are to be retained and those that are to be removed;
 - ii) a schedule in relation to every tree identified listing:
 - information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and,
 - any proposed pruning, felling or other work;
 - iii) in relation to every existing tree and hedgerow identified to be retained on the plan referred to in i) above, details of:
 - any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and
 - foundation construction methods of the dwelling; and
 - all appropriate tree and hedgerow protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced);
 - iv) soft landscaping, to include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of new trees, hedgerows and plants noting species, plant supply sizes and proposed numbers/densities;

- v) hard surfacing materials;
- vi) vehicle parking layouts;
- vii) other vehicle and pedestrian access and circulation areas;
- viii) boundary treatment.

No development shall take place on the site, including site clearance, until the approved tree and hedgerow protection measures are in place. The approved tree and hedgerow protection measures shall be retained in place until completion of the development. The foundations of the dwelling shall be constructed in accordance with the approved details. No fires shall be lit within 20 metres of the nearest point of the canopy of any retained tree.

All hard landscaping and boundary treatment works shall be carried out in accordance with the approved details before the dwelling is first occupied.

All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner.

- 6) Any trees, hedges or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. No new tree or hedgerow planted in accordance with condition 5) shall be pruned or cut in any manner within 5 years from the date of the occupation of the dwelling, other than in accordance with the approved plans and details, without the prior written approval of the local planning authority.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or dormer windows, other than those expressly authorised by this permission, shall be inserted or constructed on the building hereby permitted without the specific grant of planning permission from the local planning authority.

End of schedule