



Appeal Decision

Site visit made on 6 June 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 8 September 2017

Appeal Ref: APP/Q9495/W/17/3168895

Brookdene, Brook Road, Windermere LA23 2ED

- 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 Jane Dixon & Mr Geoff Brown against the decision of Lake District National Park Authority.
 - The application Ref 7/2016/5422, dated 17 May 2016, was refused by notice dated 8 September 2016.
 - The development proposed is the erection of a new dwelling and associated landscaping works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new dwelling and associated landscaping works at Brookdene, Brook Road, Windermere LA23 2ED in accordance with the terms of the application, Ref 7/2016/5422, dated 17 May 2016, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Ms Jane Dixon and Mr Geoff Brown against the Lake District National Park Authority. This application is the subject of a separate Decision.

Procedural Matters

3. Revised plans showing a reduced eaves level height of the hipped roof flank wall elevation facing towards the neighbouring property at Rivendell were submitted with the appeal. These were, I am advised, amended plans that the appellants wished to submit prior to the Council's determination of the application but which the Council refused to accept at that time. It is not clear whether these plans were subject to formal neighbour notification at that time, but I am satisfied that both the Council and the neighbouring objector have made comment and representation on those plans during the course of the appeal. I am satisfied that in accepting the submission of these plans during the course of the appeal, the interests of these, or other interested parties, would not be prejudiced. I have therefore considered the appeal accordingly.
4. The Council noted in their Statement of Case that a decision was imminent with regard to the designation of the Lake District area as a UNESCO World Heritage Site. That decision has now been confirmed and, with effect from 9 July 2017, the Lake District area has been confirmed as a UNESCO World Heritage Site (WHS).

5. The main parties were invited to consider the implications of the designation of the Lake District area as a WHS and to make any further comments as they felt necessary. Both agreed that the designation of the Lake District area as a WHS would not result in a different view of the impact upon heritage assets, and that the attributes which contribute to the significance of outstanding universal value of the Lake District as a WHS would be unaffected. From the information before me I am satisfied that the proposed development would not result in harm to the heritage value of the Lake District landscape and I have determined the appeal accordingly.

Main Issue

6. The main issue is the effect of the proposed development upon the living conditions of occupiers of Rivendell and Oakdene, with particular regard to outlook and daylight / sunlight.

Reasons

7. Brook Road, New Road and the Mill Beck form an approximately triangular shaped residential block, along which houses front Brook Road and New Road. Those houses located further west along Brook Road benefit from longer, south facing rear gardens than those located further east. The appeal site, the appellants' existing property at Oakdene within which the appeal site lies, and the adjacent Rivendell are located towards the western end of Brook Road.
8. I found the rear gardens of Oakdene and Rivendell to be generously proportioned, although the added width and depth of the existing garden at Oakdene made it noticeably larger than that of Rivendell. The gardens slope down towards the Mill Beck, gently at first then steeply towards the banks of the beck itself.
9. The rear garden of Rivendell is split into terraced areas of varying levels. At all levels of the rear garden however, ground levels are materially lower than those of the appeal site. Both gardens are well stocked, and increasingly wooded towards their southern ends where they meet the beck. The opposite side of the beck is heavily wooded with densely situated mature trees. Collectively, the outlook from the rears of both properties, and from the appeal site, is towards a heavily wooded, verdant, sylvan backdrop that occupies most of the southeast to southwest quadrant.
10. Rivendell is a large detached two storey property with accommodation within the roofspace. Because of ground levels which fall away from the rear of that property, a lower ground floor exits at garden level with the upper ground floor exiting to the garden via a raised metal deck and steps down to the garden. The proposed dwelling would extend beyond the rear face of Rivendell by a considerable distance. It would also be set at a higher ground level, although the exact difference in levels has been a point of continuing dispute between the various parties.
11. The Council do not refer to any policies within the development plan¹ in their reason for refusal, relying instead on the provisions of the National Planning Policy Framework (the Framework) and, specifically, paragraph 17 of the Framework. It sets out a set of 'core land-use planning principles' which it

¹ Lake District National Park Core Strategy (Local Plan Part One) and the saved policies of the Lake District national Park Local Plan (1998)

states should underpin both plan-making and decision-taking, of which one is that *'planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings'*. The Framework does not define what constitutes a 'good level' of amenity.

12. Nor do the Council contend that the proposal would fail to secure high quality design, or that it would result in harm to the amenities and living conditions of occupiers of either Rivendell or Oakdene in terms of direct overlooking or loss of daylight / sunlight internally to either house. Instead, the reason for refusal relates to the effect of the proposal, arising from its rearward projection, height and proximity to adjoining properties, upon the residential amenity enjoyed from the garden areas of Rivendell and Oakdene, particularly with regard to outlook and daylight / sunlight.
13. Rivendell and Oakdene both benefit from large, private rear gardens. In the case of the latter, despite the effect of the proposal to sub-divide the existing garden plot, that property would still have access to a substantially sized rear garden even if the proposal were to come to fruition. Both properties would continue to benefit from large, well-stocked and pleasantly landscaped rear gardens. The outlook from and along the rear gardens, and from the rear elevations, would continue to be towards an attractive, wooded hillside with gardens that slope down towards a small beck. The opposing side of the valley, by virtue of the extent and density of the woodland, would continue to provide a seasonally changing backdrop to the pleasant gardens of both properties. The proposal would not change this.
14. With regard to Rivendell, I noted that the garden level lies at a considerably lower level than that of Oakdene. It follows that it would also be considerably lower than the proposed dwelling. However, the difference in ground levels and the relative height of the boundary fence and hedging give the garden a distinct sense of enclosure that I found adds to, rather than detracts from, its character. The flank wall of the dwelling would extend above this height but, having regard to the proposed design, massing and articulation of the flank wall and eaves levels, it would not do so excessively.
15. The massing and rearward projection of the proposed dwelling would add to this sense of enclosure. That is not to say that that additional sense of enclosure would be harmful; in my judgement, it would not. I accept that, during winter months, the sun's path will dip below the largely deciduous woodland opposite. However, I find it more likely that at such times direct sunlight would already have been impeded by those trees, and other trees and skyline structures, such that the flank wall of the proposed dwelling would not materially add to overshadowing or loss of light. With regard daylight, the garden and dwelling at Rivendell face due south, with a more open aspect towards the south east and east across the rear gardens of adjacent properties. The trees may cast winter shadow, but the outlook would nonetheless be due south and whilst the Council and neighbouring occupiers have expressed concern that the proposal would result in a 'gloomy and dank place'², the appellants' Daylight and Sunlight Assessment (DSA) reaches a different conclusion.

² Attributed to Geoff Davis, referred to in the transcript extracts of the Development Control Committee meeting on 7th September 2016, provided by the objector

16. I have not been presented with any objective evidence that seeks to challenge the findings set out in the appellants' DSA and, from my observation of the site and the adjacent property and grounds at Rivendell, I agree. Whilst the proposed dwelling's flank wall would be visible above the existing boundary treatment between Rivendell and the appeal site, and, due to the orientation of the two properties, could be expected to cast some shadows at certain times of the year, I do not consider its effect to be materially harmful to the living conditions of occupiers of Rivendell as experienced from the outdoor and garden areas of that property. Moreover, although projecting to its maximum depth at ground floor level, the additional height and massing of this element above the existing boundary treatment would be limited. The lean-to roof of the rearmost element, leading in to the hipped roofed flank wall, would break up the massing of that flank wall.
17. I conclude for the reasons set out above, that the living conditions of occupiers of Rivendell, with particular regard to the effect upon outlook, daylight and sunlight to the garden would not be materially harmed. Moreover, in the Framework's parlance, I find that the generously proportioned and well-stocked private garden area of Rivendell, looking towards the seasonally changing, sylvan backdrop provided by the trees on the opposing hillside ensure that Rivendell would continue to enjoy a good standard of amenity, and one that the proposal would not materially harm. There is, therefore, no conflict with the core planning principles of the Framework in seeking to secure a good standard of amenities for all existing and future occupiers of land and buildings, and high quality design.

Other Matters

18. The site lies within the Windermere Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon the decision maker such that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. The National Planning Policy Framework (the Framework) states that great weight should be given to the asset's conservation and that any harm or loss should require clear and convincing justification.
19. The Council conclude that the design and appearance of the proposed dwelling, or its siting within the appeal site, would not cause harm to the character or appearance of the Conservation Area. From all that I have seen and read, I see no reason to reach a different conclusion. The large tree at the front of Oakdene, around which the existing driveway runs, is protected by a Tree Preservation Order (TPO). Although works would be carried out within the tree's root protection area, I have no evidence before me to lead me to reach a different conclusion to the Council's which was that the proposal would have minimal impact on that tree.
20. With regard to the tree, the objector is concerned that efforts to site the proposed dwelling in such a manner so as to avoid harm to the tree, would result in the dwelling having a harmful impact on their living conditions experienced from the rear, and rear garden, of their property. Although I have noted the conclusions regarding the tree, I am also conscious that it is a protected tree and, moreover, contributes significantly to the character and appearance of the surrounding area. However, as I have concluded that the

proposed dwelling would not cause unacceptable harm to the living conditions of occupiers of Rivendell, I have not considered this matter further.

21. I have noted references to a previous scheme for the development of the appeal site, but I have not been provided with the full details or circumstances of that proposal. In any case, I have determined the appeal on its own merits.

Conditions

22. I have considered the conditions suggested by the Council in light of the Framework and Planning Practice Guidance. Where necessary and in the interests of conciseness I have made amendments to the wording of the suggested conditions.
23. In addition to a time limit condition, I agree that a condition specifying the approved plans is necessary in order to provide certainty. Conditions specifying the details of the external walls and roofing materials and the withdrawal of permitted development rights for extensions, alterations and the insertion of windows on the dwelling are necessary in the interests of character and appearance. Additionally, in relation to permitted development rights, this is also necessary in the interests of the living conditions of occupiers of neighbouring properties.
24. A condition requiring works to be carried out in accordance with the pre-development arboricultural report is necessary in the interests of character and appearance and the well-being of the protected tree, whilst one in relation to energy efficiency measures is necessary in order to reduce carbon emissions. A condition restricting the occupation of the dwellings is needed to ensure that the additional units are occupied by persons with a defined local need.

Conclusion

25. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

Graeme Robbie

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: 8306-P12D; 8306-P14B; 8306-P16B; 8306-P19B; 8306-P10A; 8306-P11C; 8306-P13A; 8306-P15A; and 8306-P21.
- 3) The dwellinghouse hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her.

The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether this condition is being observed.

In this condition the following definitions apply:

'Person with a Local Connection' means an individual who before taking up occupation of the dwelling satisfies one of the following conditions:

- (1) The person has been in continuous employment in the Locality defined for at least the last 9 months and for a minimum of 16 hours per week immediately prior to occupation; or
- (2) The person needs to live in the Locality defined because they need substantial care from a relative who lives in the Locality defined, or because they need to provide substantial care to a relative who lives in the Locality defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency; or
- (3) The person has been continuously resident in the locality defined for three years immediately prior to: a) Needing another dwelling resulting from changes to their household, including circumstances such as getting married, divorced, having children, or downsizing. b) Undertaking full-time post-secondary education or skills training and is returning to the locality defined within 12 months of its completion, or c) being admitted to hospital, residential care or sentenced to prison, and are returning to the locality defined within 12 months of their discharge/release, or
- (4) The person is a person who –
 - a) Is serving in the regular forces or who has served in the regular forces within five years prior to occupation;
 - b) Has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where –
 - i. The spouse or civil partner has served in the regular forces; and
 - ii. Their death was attributable (wholly or partly) to that service;or

- c) Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service.

'Locality' shall mean the administrative areas of the Parishes of: Broughton East; Cartmel Fell; Crook; Crosthwaite and Lyth; Helsington; Hugill; Kentmere; Lakes; Longsleddale; Nether Staveley; Over Staveley; Skelwith; Staveley in Cartmel; Underbarrow and Bradleyfield; Upper Allithwaite; Windermere; Witherslack; Meathop and Ulpha; and those parts of the Parishes of Fawcett Forest; Strickland Ketel; Strickland Roger; and Whitwell and Selside which lie within the administrative area of the Lake District National Park.

An 'Only or Principal Home' is a dwellinghouse which is occupied continuously for a minimum period of six months in every twelve month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation.

The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this condition.

- 4) Prior to the first use of the development hereby permitted, at least 10% of the energy supply of the development shall be secured from decentralised and renewable or low carbon energy sources. Details and a timetable of how this is to be achieved, including details of any physical works on site, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter, unless otherwise agreed in writing by the Local Planning Authority.
- 5) The external walls of the building hereby granted permission shall be completed with a finish of roughcast in which the final coat contains a preparation of fairly coarse aggregate thrown on as a wet mix and left rough and the rendered walls shall be painted off white or similar.
- 6) The slate roof and the stone finish to the walls of the development hereby permitted shall match in colour, form and texture, and shall otherwise harmonise with the existing building known as Oakdene at the date of the application unless otherwise shown on the plans hereby approved.
- 7) Unless otherwise agreed in writing by the Local Planning Authority, the development shall take place in full accordance with the recommendations and tree protection plan within the Pre-development Arboricultural Report by Treescapes Consultancy Ltd dated 17 June 2016 and received by the Local Planning Authority on 17 June 2016.
- 8) 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 additional windows or doors shall be installed in the side elevations of the building hereby permitted.
- 9) 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 extensions shall be carried out to the rear and/or side elevations of the building hereby permitted.