
Appeal Decision

Site visit made on 23 January 2018

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2018

Appeal Ref: APP/A2335/W/17/3180434

7 Dalesview Crescent, Heysham LA3 2JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Christopher Ian Hemingway against the decision of Lancaster City Council.
 - The application Ref 17/00409/VCN, dated 6 April 2017, was refused by notice dated 31 May 2017.
 - The application sought planning permission for the erection of 2 semi-detached houses (pursuant to the variation of conditions 2 and 9 on planning permission 13/01140/FUL to alter the landscaping and boundary details including the fence and hardstanding) without complying with conditions attached to planning permission Ref 16/00757/VCN, dated 12 October 2016.
 - The conditions in dispute are No's 2 and 4 which state that:
 - *Condition 2: Within 6 months of the date of this consent, the hard and soft landscaping of the site shall be carried out in accordance with the details shown on drawing number 1739-011E. The approved scheme shall be maintained by the applicant or their successors in title thereafter for a period of not less than 5 years to the satisfaction of the local planning authority. This maintenance shall include the replacement of any tree or shrub which is removed, becomes seriously damaged, seriously diseased or dies, by the same species or different species and shall be agreed in writing by the local planning authority. The replacement tree or shrub must be of similar size to that originally planted.*
 - *Condition 4: Within 6 months of the date of this consent, the fence enclosing the garden of plot 2 shall be repositioned and finished in accordance with the details shown on drawing numbers 1739-011 E and 1739-012 E, including the installation of the gate, and shall be retained as such at all times thereafter.*
 - The reasons given for the conditions are:
Condition 2: In the interests of the amenity of the area and to ensure that the approved landscaping scheme is implemented and maintained to an appropriate standard.
Condition 4: For the avoidance of doubt and in the interests of the amenity of the area.
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Decision

1. The appeal is allowed and the planning permission is granted for the erection of 2 semi-detached houses (pursuant to the variation of conditions 2 and 9 on planning permission 13/01140/FUL to alter the landscaping and boundary details including the fence and hardstanding) without complying with conditions attached to planning permission Ref 16/00757/VCN at 7 Dalesview Crescent, Heysham LA3 2JQ in accordance with the application Ref 17/00409/VCN made on the 6 April 2017, subject to the following conditions:

- 1) This permission relates to the following approved plans: 1739-010A (solely in relation to the location plan, approved under application 13/01140/FUL); 1739-011E; 1739-012E; and 1739-013A (approved under application 13/01140/FUL).
- 2) Within 6 months of the date of this consent, the hard and soft landscaping of the site shall be carried out in accordance with the details shown on drawing number 1739-011E. The approved scheme shall be maintained by the applicant or their successors in title thereafter for a period of not less than 5 years to the satisfaction of the local planning authority. This maintenance shall include the replacement of any tree which is removed, becomes seriously damaged, seriously diseased or dies, by the same species or different species and shall be agreed in writing by the local planning authority. The replacement tree must be of similar size to that originally planted.
- 3) The surface water drainage shall be maintained at all times in accordance with the details shown on drawing numbers 1739-011E.
- 4) Within 6 months of the date of this consent, the fence enclosing the garden of plot 2 shall be repositioned and finished in accordance with the details shown on drawing numbers 1739-011 E and 1739-012 E, including the installation of the date, and shall be retained as such at all times thereafter.
- 5) The parking areas and garage shown on drawing number 1739-011E shall be used solely in association with the residential use of the dwellings indicated as 7A and 7B and shall be retained in accordance with the approved details at all times thereafter.

Background and Main Issues

2. The appeal site relates to a pair of semi-detached dwellings that have been built after the grant of planning permission by the Council in 2013, subject to a number of planning conditions¹. The Council later approved a variation to condition No's 2 and 9 in 2016² to alter the landscaping and boundary details. This variation included boundary fences and hardstanding. The appellant wishes to vary condition No 2 on the 2016 planning permission to reduce the maintenance period for the approved landscaping scheme and remove reference to 'tree' and 'shrub'. In terms of condition No 4 on the 2016 planning permission, the appellant proposes to remove wording relating to the finish of the fence.
3. As a result, I consider the main issue is the effect that varying condition No's 2 and 4 would have on the character and appearance of the area.

Reasons

Condition No 2

4. The approved landscaping scheme on plan Ref: 1739-011E shows areas to be surfaced in brick paviors, precast concrete textured paving flags, grass and 3 No. Whitebeam trees. In terms of the trees, one is shown in the rear garden of plot 1 and one each is shown in the front garden of plots 1 and 2 either side of

¹ Council Application Ref: 13/01140/FUL

² Council Application Ref: 16/00757/VCN

the off-street parking area. Other than the grassed areas in the rear gardens of both plots, a strip of grass is shown to the front and side of each house.

5. At the time of my visit, the grassed areas to the side and rear of the appeal site together with the 3 No trees do not accord with the approved landscaping scheme. Notwithstanding this, the appellant submits that the land to which the approved landscaping scheme relates will not support anything other than grass. Their reasoning is that when the neighbouring dwellings on the crescent were built, the appeal site was filled with rubble and rubbish before it was covered in a 50 millimetre layer of top soil. The appellant says that this prevents trees from rooting. Moreover, they assert that if trees were planted that they would damage underground utilities.
6. Even though the appellant disputes the appeal site's prior recreational use, a street view image³ shows the land covered in grass and populated by four trees close to the head of the cul-de-sac. While the appearance of the land may have changed by the time the appellant purchased the site, the image does not support the appellant's reasoning behind their wish to change the wording of condition No 2. There is also no evidence to suggest that the appellant has tried to plant trees in accordance with the approved scheme or that harm would be caused to utilities.
7. Other properties in the crescent have modest grassed gardens to the front. Trees and shrubs are to the front of some properties. Thus, I see no compelling reason preventing trees from being planted. There are modest areas of grass to the front and side of the dwellings. They offer a limited contribution due to the quantity of grass and the presence of large boulders on the grass to the side. As such, the landscaping currently in place does not contribute positively to the identity and character of the area or retain sufficient landscape areas to mitigate development impacts. Yet, as there are no shrubs in the approved landscaping scheme, condition No 2 is not precisely drafted.
8. A five-year maintenance period is a common approach to ensure that newly planted landscaping is established and softens the effect of new development. While the appellant has maintained the landscaping in situ, I do not consider that the time period should be altered, especially as there are no trees currently on the site. Nor does the evidence suggest that attempts have been made to plant trees.
9. Accordingly, I conclude that condition No 2 is reasonable, necessary, relevant to the development to be permitted and relevant to planning insofar as the approved landscaping scheme in the interests of the character and appearance of the area. However, I will replace the version of condition No 2 that is subject of this appeal with one that removes reference to shrubs. The development would comply with Policy DM35 of the A Local Plan for Lancaster District 2011-2031 Development Management DPD (Local Plan); and paragraph 17 of the National Planning Policy Framework (the Framework); which jointly, among other things, seek development to: contribute positively to the identity and character of the area through high quality design; retain appropriate amounts of garden/outdoor space for occupiers of both proposed and neighbouring uses; and retain sufficient landscape areas/buffer zones and appropriate levels of open space provision to mitigate development impacts on adjoining sensitive uses.

³ Council's Supplementary Statement, Appendix 1

Condition No 4

10. I saw during my site visit that a concrete post and timber panel boundary fence extends along the flank boundary of plot 2. It runs between the rear garden of this plot next to an area of hardstanding and the front north-west corner of plot 2. The timber panels were stained in a dark brown, while the concrete posts were not coloured in any form of stain as set out on plan Ref: 1739-012E. The main parties agree that the position of the fence that I saw is not a matter for this appeal. Thus, my findings focus on its colour treatment.
11. The appellant submits that since the fence that I saw during my site visit was erected that neighbouring properties have erected fences to match. However, I do not have any details of boundary fences erected at neighbouring dwellings. In the crescent there are a variety of materials used to form boundaries, including timber. In the main, boundaries are coloured in a variety of shades of red and brown. Other than the appeal site, I did not see any other properties with concrete posts in a prominent position. Without treatment the posts have a stark appearance, regardless of the lack of complaints. Thus, condition No 4 is, in its current form, reasonable, necessary, precise, enforceable, relevant to the development to be permitted and relevant to planning, given the need to have regard to local distinctiveness in Local Plan Policy DM35.
12. For these reasons, I conclude the effect of varying condition No 4 would result in a moderate harm to the character and appearance of the area which would conflict with Local Plan Policy DM35 and paragraph 17 and Section 7 of the Framework. Collectively these seek, among other things, to secure high quality design that has regard to local distinctiveness and the palette of materials.

Other matter

13. I note the appellant's points about the accuracy of the Council's delegated report and the Council's response to a number of the points made. However, this is not a matter for this appeal to address, which I have considered on its planning merits having regard to the evidence before me.

Conclusion and conditions

14. I am dismissing the appeal, in part, on the substantive matters relating to condition No's 2 and 4, I have updated condition No 2 to remove the term 'shrubs', as the approved landscaping scheme does not contain any. The effect of the change to condition No 2 is to allow the appeal.
15. For these reasons, I conclude that the appeal should be allowed insofar as it is necessary insofar as condition No 2 for the reasons set out above. I will grant a new planning permission with this condition, but retaining all the other conditions from the previous permission⁴ that appear still to be relevant.

Andrew McGlone

INSPECTOR

⁴ Council Application Ref: 16/00757/VCN