



Appeal Decision

Site visit made on 22 May 2019

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 2 October 2019

Appeal Ref: APP/L2820/W/19/3223957

35 Stamford Road, Geddington NN14 1BB

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Gyles Dickens against the decision of Kettering Borough Council.
 - The application Ref: KET/2018/0867, dated 5 November 2018, was refused by notice dated 3 January 2019.
 - The application sought planning permission for a dwelling and alterations to existing garage without complying with a condition attached to planning permission Ref: KET/2017/0636, dated 24 October 2017.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall not be carried out other than in accordance with the approved plans referenced: KET/2017/0636/1; 1469.12.24; 1469.13.06; 1469.06.17.
 - The reason given for the condition is: In the interest of securing an appropriate form of development in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.
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Decision

1. The appeal is allowed and planning permission is granted for a dwelling and alterations to existing garage at 35 Stamford Road, Geddington NN14 1BB in accordance with the application Ref: KET/2018/0867 made on the 5 November 2018, without complying with condition number 2 set out in planning permission No: KET/2017/0636 granted on 24 October 2017 by Kettering Borough Council, but otherwise subject to the schedule of conditions attached to this decision.

Procedural Matters

2. Planning permission has been granted for a dwelling together with alterations to an existing garage. The dwelling is currently under construction. The appeal seeks permission to vary Condition 2 relating to the approved plans. It proposes to substitute plans showing the as built dwelling for those that were approved. The approved plans include a site section which showed the ridge height of the new dwelling to be the same as the ridge height of No 33 Stamford Road. As built to date, the height of the as built dwelling from slab to ridge is in accordance with the approved plans. However, the section drawing on approved plan 1469.06 Rev 17 incorrectly showed the height of No 33 so as it appeared that the height of the new dwelling would replicate the height of No 33. The as built dwelling is approximately 2.26 metres higher than No 33.

3. The application was submitted in accordance with s73 of the Town and Country Planning Act 1990 (TCPA). It is not disputed that the development has commenced and at the time of my site visit I observed that the proposal was largely constructed. Accordingly, I have dealt with this matter as an appeal under s.73A of the TCPA.

Main Issues

4. The main issue is the effect that varying the disputed condition would have on:-
 - i) the character and appearance of the surrounding area; and
 - ii) the living conditions of neighbouring occupiers at No. 33 Stamford Road, with regards to outlook and privacy.

Reasons

Character and appearance

5. No 35 Stamford Road forms the first dwelling within a short ribbon pattern of development fronting the highway. The appeal site lies within garden curtilage to No 35 and is separated from the main village envelope by open fields positioned to its side. As a consequence, the appeal site has a pleasant semi-rural appearance.
6. Dwellings are typically varied in style and type and these variations make a positive contribution to the character and appearance of the area. Albeit dwellings are generally arranged in a linear pattern along this part of the highway, No 33 is positioned to the rear of No 35 and consequently it is at odds with the prevailing pattern of linear development.
7. By reason of varying land levels and dwelling types there is an absence of a common ridge height along this part of the highway. The proposed dwelling fills a gap between the existing built form and albeit its ridge height is greater than No 33, it retains a lower ridge height than No 35. Notwithstanding its visual prominence, when viewed from the side, the dwellings are arranged in descending height order moving away from the highway and as a result the proposed dwelling assimilates well with the existing dwellings.
8. It is the Council's case that the proposal appears a floor higher than shown on the approved section plan. However, whilst I recognise the difference in height of the neighbouring bungalow between the approved and proposed plans, the difference in height between the proposal and No 33 does not result in a development that unacceptably overwhelms or dominates the neighbouring dwelling particularly given that No 33 includes living space within its roof structure. Furthermore, the presence of existing vegetation largely screens No 33 from public view across open fields to its side. In addition, I am mindful that the height, scale and bulk of the proposal is largely unaltered from the approved dwelling.
9. At the time of my site visit I observed that No 35 occupies a prominent position next to the highway and is highly visible in public views. Notwithstanding that the proposal is positioned nearer to No 33 than No 35, by reason of the new dwelling including a subservient height to No 35, the proposed development relates well to the height of No 35 and does not appear incongruous within the

streetscene. Overall, I find that the proposal makes a positive contribution to the character and appearance of the surrounding area.

10. Therefore, I conclude that the proposal would not have an unduly harmful effect on the character and appearance of the surrounding area. Thus, the proposal would accord with Policies 8 and 13 of the North Northamptonshire Joint Core Strategy (2016)(CS) insofar as these policies require development to be appropriate to the surroundings, local character and the overall form, character and landscape setting of the settlement. In addition, the proposal would concur with similar provisions of the National Planning Policy Framework which require developments to be sympathetic to local character including the surrounding built environment.

Living Conditions

11. The proposed dwelling includes an unaltered footprint and design, save for a reduced ridge height of the single storey side element, an additional velux window to a ground floor bathroom and a door substituted for a window within the kitchen of the approved scheme. The Council contends that the height of the windows and balcony to the first floor rear elevation would be lower if the proposed dwelling had been constructed to the same ridge height as No 33. However, the proposal is broadly similar to the approved scheme including the position, height and style of windows and balcony. Additionally, it includes a frosted glass screen to some 1.7 metres in height to the first section of the balcony surround, which the Council previously considered did not afford unduly sensitive overlooking opportunities.
12. I have carefully considered the comments of the occupants of the neighbouring dwelling, however, as there is little difference in the height of the proposed windows and balcony, to my mind there is no greater opportunity for overlooking of No 33 as a consequence of the proposal. In addition, as the proposed windows do not face directly towards No 33, any views would be at an angle and require a person to be stood close to the window or balcony edge. Whilst some views are capable over part of the rear garden and the frontage to No 33, these views would be largely to the same extent as would have existed under the approved scheme.
13. Conditions requiring a scheme for boundary treatment and hard and soft landscaping are proposed which would partially screen the proposal from the neighbouring dwelling and ameliorate the impacts on outlook and privacy. Overall, when comparing the approved and proposed schemes, I do not consider that the opportunity for overlooking is significantly different so as to materially adversely effect the living conditions of the neighbouring occupiers.
14. It is the Council's case that due to the ridge height of No 33 being some 2.26 metres lower than the proposal there would be an increased loss of light and sense of overbearing. The proposed dwelling retains a maximum ridge height in the region of 8.515 metres and includes a single storey element to its side with a ridge height that is reduced from the approved height and would be broadly similar to No 33. Consequently, this side element breaks up the mass of the proposal and lessens its dominance when viewed from the neighbouring dwelling. Furthermore, the Council advises that the affected rooms to the front of the neighbouring dwelling are not considered to be habitable and therefore taken overall, I find the difference between the proposal and the approved

scheme is not so significant so as to be unduly harmful to the occupiers of No 33.

15. Overall, I conclude that the proposal would not be significantly harmful to the living conditions of the neighbouring occupiers, with particular regard to outlook, privacy and loss of light. Thus, the proposal would accord with CS Policy 8 insofar as this policy seeks to protect amenity of neighbouring occupiers by reason of loss of light or overlooking.

Conditions

16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73A should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council advises that the submission elements of conditions 3, 4, 6 and 8 of the original planning permission have been discharged, however, this does not apply to the entirety of these conditions. Furthermore, as I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
17. I have not imposed a time limit condition for the commencement of development as the original approved development has already started and the details of the proposed and approved development are largely the same.
18. A condition specifying the approved plans is necessary as this provides clarity.
19. I have imposed conditions specifying external materials, the details of boundary treatment and a scheme of hard and soft landscaping as this is necessary to safeguard the character and appearance of the area.
20. A condition requiring means of enclosure of the access to be positioned away from the highway and inward opening is necessary to protect the safety of highway users.
21. A condition is required for contamination to safeguard the interests of the environment and public safety.
22. Conditions restricting the hours of work and the removal of permitted development rights are necessary to safeguard the living conditions of the neighbouring occupiers.
23. A condition specifying obscure glazing to first floor windows within the side elevations is necessary as, by reason of their position and height, they would provide an opportunity to overlook neighbouring properties and therefore it is necessary to protect the privacy of neighbouring occupiers.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed and the planning permission granted in accordance with the schedule of conditions attached to this decision.

E Brownless - INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: KET/2017/0636/1, 1469.12.26, 1469.13.06, 1469.06.26
- 2) No development shall take place until details of the types and colours of all external facing and roofing materials (including natural slates for the roof areas) to be used including to the balcony screen walls and garage alterations hereby approved, together with samples, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out other than in accordance with the approved details.
- 3) Prior to the first occupation of development a scheme for boundary treatments shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved scheme has been fully implemented in accordance with the approved details.
- 4) No gates, barrier or means of enclosure shall be erected across a vehicular access within 5.5m of the highway boundary. Any such feature erected beyond that distance shall be hung to open inwards away from the highway.
- 5) Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until Parts A to D have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the Local Planning Authority in writing until condition D has been complied with in relation to that contamination.

A. Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

(i) a survey of the extent, scale and nature of the contamination;

(ii) an assessment of the potential risks to:

- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,

- archaeological sites and ancient monuments;

- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11(or any model procedures revoking or replacing those model procedures with or without modification)'.

B. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

C. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

D. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition B, which is subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with condition C.

- 6) Works audible at the site boundary will not exceed the following times unless with the written permission of the Local Planning Authority or Environmental Health. Monday to Friday 08.00 to 18.00 hrs, Saturday 08.30 to 13.30 hrs and at no time whatsoever on Sundays or Public/Bank Holidays. This includes deliveries to the site and any work undertaken by contractors and subcontractors.

- 7) Prior to the first occupation of the development a scheme of hard and soft landscaping which shall specify species, planting sizes, spacing and numbers of trees and shrubs to be planted and any existing trees to be retained shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in the first planting and seeding seasons following the occupation of the building, unless these works are carried out earlier. Any newly approved trees or plants which, within a period of 5 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) The window at first floor level on the east elevation and the window at first floor level on the west elevation as depicted upon approved plan 1469.12.26 shall be glazed with obscure glass and thereafter shall be permanently retained in that form.
- 9) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General permitted Development)(England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no building, structure or other alteration permitted by Class A, B, C or E of Part 1 of Schedule 2 of the Order shall be erected or made on the application site.