



Appeal Decision

Site visit made on 24 September 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal Ref: APP/N1025/W/19/3232800

1 Brook Road, Borrowash DE72 3FW

- 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 McAllister against the decision of Erewash Borough Council.
 - The application Ref ERE/0718/0002, dated 7 May 2018, was approved on 9 January 2019 and planning permission was granted subject to conditions.
 - The development permitted is detached dwelling.
 - The condition in dispute is No 3 which states:
There shall be no construction of the proposed new dwelling above slab level until all the alterations to the existing dwelling (1 Brook Road) shown on drawing number 18.071 S03.04 Rev B are completed. These alterations shall be retained as such thereafter.
 - The reason given for the condition is:
To ensure an acceptable level of amenity for the occupiers of 1 Brook Road.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The name of the applicant on the planning application form is given as 'Mr McAllisyer'. However, the appellant's agent has confirmed this is an error. The correct spelling is given on the Council's decision notice and the appellant's appeal form as Mr McAllister.
3. The appellant has provided a list of drawings on which they consider the Council based their decision. This list includes drawings that were superseded during the application process including a site plan drawing ref.18.071 S03.01 Rev C. The site plan approved on the Council's decision notice is ref.18.071 S03.01 Rev D which relocated the proposed bin store. In any case, the shape and position of the dwelling relative to the existing dwelling at No 1 Brook Road is the same on both Revision C and D of the drawing. Accordingly, I have based my assessment on the site plan drawing referenced on the Council's decision notice, Rev D, and the other drawings referenced under condition 2 of the planning permission.

Main Issue

4. Planning permission has been granted to erect a detached dwelling on land currently forming part of the curtilage of No 1 Brook Road. The appellant wants

to proceed with the development without making any changes to the existing dwelling.

5. The main issue is whether condition 3 is necessary and reasonable in all other respects to protect the living conditions of the occupants of No 1 Brook Road with particular regard to outlook and light.

Reasons

6. No 1 Brook Road has principal clear glazed ground floor windows in the elevation facing the position of the new dwelling. These windows serve an open plan living room and dining area at ground floor level and bedrooms at first floor level.
7. The design of the proposal includes a lower eaves height to the elevation facing No 1. Even so, the overall bulk, mass and height of the new dwelling and its close proximity to the nearest principal windows serving No 1 would have a visually dominating impact on the occupants of No 1. This would materially harm the means of outlook for occupants of this neighbouring dwelling. The alterations required by condition 3 and illustrated on the referenced plan would compensate for this impact providing a suitable alternative means of outlook to the affected rooms on elevations facing away from the new dwelling. This would mitigate the impact on outlook to an acceptable degree to overcome the material harm identified.
8. The Council's evidence also cites an impact on levels of light. I note that the new dwelling has been designed with a lower eaves height on the elevation facing No 1. I have no substantive evidence before me, for example in terms of any daylight levels surveys to reach a definitive conclusion on the extent of any impact on light. On this basis, I have not identified any conflict with the development plan or the National Planning Policy Framework (the Framework) in this particular respect. However, this does not override the harm to outlook identified above.
9. I acknowledge that the new dwelling would not result in material harm to privacy for the occupants of No 1 given there would be no primary windows facing the existing dwelling. However, it is clear from the Council's evidence that impact on privacy is not their concern. A lack of impact on privacy does not overcome the harm to outlook that would result were the alterations required by condition 3 not carried out.
10. The appellant contends that the amendments required by condition 3 would be counterproductive as the larger openings on the eastern and western elevations would be cancelled out by the reductions to window sizes on the southern elevation. I disagree, as the larger openings to the eastern and western elevations would alter the main focus for occupants of No 1 away from the development and would provide a greater sense of outlook to the respective rooms.
11. It is suggested that the new French doors would be narrower than the existing feature angled window and that this would be problematic for the appellant's friends who have accessibility requirements. I noted on site that the panel to be infilled on the angled window is currently openable. I must consider the drawings before me and have no substantive evidence to demonstrate the width of the new French doors would not provide suitable means of access nor

that the remaining glazed panels to the angled window could not be adapted to reverse the opening panel should this prove necessary.

12. The ability to make future alterations to the east and west facing elevations of No 1 does not provide sufficient certainty that an acceptable means of outlook would be provided. The requirements of condition 3 provide this certainty and the timescale given for the alteration to be made ensures that, should the new dwelling not implemented, the alterations to No 1 would not need to be undertaken.
13. For the above reasons, condition 3 is necessary and reasonable in all other respects in order to ensure suitable living conditions are retained for the occupants of No 1 with particular regard to means of outlook. The condition therefore complies with Policy 10 of the Erewash Core Strategy (2014) and saved Policy H12 of the Erewash Borough Local Plan Saved Policies 2005 (Amended 2014) which amongst other things seek to provide a suitable means of amenity for occupants and Paragraph 127 of the Framework which requires that developments provide a high standard of amenity for existing and future users.
14. I therefore conclude that the appeal should be dismissed.

M Russell

INSPECTOR