



Appeal Decision

Site visit made on 15 October 2019

by A McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2019

Appeal Ref: APP/R4408/W/19/3232907

South Grove House, South Grove Drive, Hoyland, Barnsley S74 9DY

- 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 Dale Fox against the decision of Barnsley Metropolitan Borough Council.
 - The application Ref 2019/0043, dated 7 January 2019, was refused by notice dated 29 March 2019.
 - The development proposed is erection of two detached dormer bungalows.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the character and appearance of the surrounding area;
 - the living conditions of neighbouring and future occupiers with regard to privacy and outlook respectively; and
 - whether sufficient evidence and information has been provided to be able to adequately assess the impact of the proposal with particular regard to a coal mining risk assessment and a tree report.

Reasons

Character and appearance

3. Policy D1 of the Barnsley Local Plan 2019 (the LP) states that development is expected to be of high quality design and features of Barnsley. Furthermore, the Council's Supplementary Planning Document 'Designing New Housing Development' (the SPD) says that development must respect local context, amongst other things, and that the primary design source for maintaining character should be the area in which the development site is located, if this is a positive source.
4. The appeal site is formed by part of the existing large garden area of South Grove House and is located within an established residential area consisting of a wide range of housing types and styles. As such, from my observations, I find it reasonable to describe the general character and appearance of the area to be mixed with no single style or type of housing predominating. Nonetheless, this mix of styles and types of housing and patterns of development represents the intrinsic townscape quality of the area.

5. Whilst I have described the character of the surrounding area as mixed, it is noted that the proposed development would be accessed from Shaftesbury Drive which comprises quite distinctive two-storey dwellings configured in short terraces. Taking account of the surroundings during my visit and given the visually open nature of the appeal site when viewed from Shaftesbury Drive, I find that the proposed dwellings would most closely relate to those properties to the south of the appeal site. Furthermore, the site is elevated above the Shaftesbury Drive street level which would further increase the prominence and visibility of the proposed scheme when viewed from that direction.
6. In this context, it is noted that the two proposed dwellings would be orientated at right angles to the turning head, wider street scene and adjacent footpath of Shaftesbury Drive from which access to the site would be gained. The Council describe the dwellings as turning their back on the street to the south. In my view, this would not be significantly harmful to the character or appearance of the area as it would reflect the similar orientation of existing properties on Shaftesbury Drive. However, the main frontage and entrance of the proposed dwellings would be on the northern elevation of the buildings. As a result, there would be no active frontage towards Shaftesbury Drive and the proposed dwellings would not therefore interact positively with nearby properties or the public highway and street scene.
7. In addition, in my assessment, the design of the proposed development would not have a sufficient regard to its primary design source from surrounding properties and would be out of keeping with the pattern of development in the locality. Whilst I appreciate that the nearby built form is mixed, in my view, the proposed dormer dwellings would not be visually relatable to their immediate surroundings. I also acknowledge that recently constructed dwellings exist to the south of South Grove House which are similar in design to those proposed. However, I consider these properties to be somewhat visually removed from the immediate surroundings of the proposed dwellings. Moreover, from my observations on site, I find that the proposed scheme would be more widely visually connected to the properties and locality to the south and east.
8. I appreciate that the proposed site has been formed by part of the garden area serving South Grove House which is a large detached dwelling on a large plot. I also note that this property and other detached properties to the north, including the two recently constructed dwellings, are accessed from the private South Grove Drive. Whilst it may be argued that the proposed dwellings before me could be considered within the wider context of these other properties and the associated pattern of development, I find the circumstances in this case to be much different.
9. The proposed dwellings, accessed from Shaftesbury Drive, would be set within a more open and mixed development context particularly when viewed from the south. Furthermore, they would be visually and physically separated from South Grove House by a boundary to the north of the appeal site. As such, in my judgement and based on my assessment above, the proposed development would not be read alongside those other properties to the north which are accessed from South Grove Drive but rather within the context in and around Shaftesbury Drive.
10. Consequently, having had regard to all matters relating to this issue, I conclude that the proposal would have a significant adverse effect on the character and appearance of the surrounding area. It would, therefore, be contrary to Policies D1 and GD1 of the LP, the Council's SPD and relevant sections and design principles established in the National Planning Policy Framework (the Framework).

Living conditions

11. Policy GD1 of the LP, amongst other matters, seeks to ensure that development has no significant adverse effect on the living conditions and residential amenity of existing and future residents. The SPD supports this by saying that development should be of high quality design and identifying separation distances between buildings and property to minimise or mitigate against such impacts.
12. From what I have seen and read, the dormer windows of the proposed dwelling on Plot 2 would directly face the rear private gardens and rear elevations of nearby dwellings facing Brooke Street to the east of the appeal site. Furthermore, it is noted that these dormer windows would be the only windows serving the first-floor bedrooms of that dwelling. In addition, windows in the rear elevation of the nearby properties on Brooke Street are observed to serve habitable rooms. The submitted plans show that the proposed windows would not meet the minimum 10 metre separation distance to neighbouring gardens as set out in the SPD. As such, close views from the proposed windows would be had directly over the boundary treatment between the existing properties and the proposed dwelling into neighbouring garden areas.
13. Furthermore, from the evidence and my on-site observations, it is noted that the proposed dormer windows would barely meet the SPD's identified 21 metre separation distance to the original rear elevation windows of the nearest Brooke Street properties. Nonetheless, in my view, due to the presence of rear extensions to nearby properties which accommodate habitable rooms, the proposed windows would not meet the SPD's specified separation distance. As such, the impact on privacy for neighbouring occupiers would be exacerbated and cause material harm.
14. Due to this proximity between the existing and proposed properties and the direct views to be had from the dormer windows at Plot 2, I find that the proposal would result in a significant loss of privacy for neighbouring residents. Moreover, as the dormer windows would be the only windows serving the proposed bedrooms, they could not be conditioned to be obscure glazed to mitigate the significant impact on privacy as future occupiers of the proposed dwelling would have no outlook.
15. I acknowledge the appellant's argument that the proposal would remove the hangar building adjacent to the properties on Brooke Street and therefore improve the outlook for the residents of those properties. However, whilst this may move the visual presence of a building further from those occupying the Brooke Street properties, this benefit is, in my view, outweighed by the harm resulting from the potential loss of privacy which the proposal would create. I also note the point that all development in such residential locations would have an element of overlooking and that the natural surveillance this would bring should be seen as a benefit. Nonetheless, based on what is before me, in my assessment the benefit would be outweighed by the harm identified in this regard.
16. I now turn to the outlook of future occupiers of the proposed dwellings in relation to the ground floor bedrooms. It is noted that these bedrooms would have a single window in the south elevations and that these would be about 1 metre from the southern boundary of the site marked by a substantial stone wall and timber fence. This boundary is shown to have a height of about 2 metres. As such, in this case I find that the ground floor bedrooms would have very limited outlook for future occupiers. Furthermore, given the proximity and height of the boundary, this would result in an oppressive and unacceptable sense of enclosure. The appellant argues that future occupiers would be aware of such circumstances before moving into the proposed properties. Nevertheless, this would not mitigate or overcome the harm identified or be an acceptable reason for such circumstances to exist.

17. The Council identified that, in its view, the layout of the proposed scheme would result in the western and northern elevations of the dwelling at Plot 1 being adjacent to the access lane for Plot 2. As such, it is argued that vehicles related to Plot 2 would have to drive past Plot 1 and its amenity space and this would disturb the occupiers of Plot 1 and be detrimental to their amenity. I acknowledge that there would perhaps be some level of noise and disturbance resulting from vehicle movements. However, due to the nature of the proposal and the very limited number of vehicles likely to pass Plot 1, some of which would be vehicles related to Plot 1 in order to reach the designated parking bays, I find that such a level of disturbance would not be of any material significance in this case.
18. Having carefully assessed all matters raised in relation to residential amenity, I find that the substantive material harm identified with regard to privacy and outlook would not be overcome by the benefits of the scheme. Furthermore, I find that conditions would not adequately or suitably mitigate such adverse impacts.
19. Consequently, I conclude that the proposed development would have a significant detrimental impact on the living conditions of neighbouring and future occupiers with regard to privacy and outlook respectively. As a result, the proposal would be contrary to Policy GD1 of the LP and the SPD which both seek to ensure that such impacts of new development on residential amenity are minimised.

Background evidence

20. The Council's third reason for refusal relates to the nature and amount of evidence submitted in support of the proposal, particularly in terms of a Coal Mining Risk Assessment and an alleged out of date Tree Report. It is noted that the Council consider the submitted Tree Report to be out of date, both in terms of the date it was produced and its content as a number of trees identified in the report have now been removed from the site. In light of this and from what I saw on site, it is evident to me that this report was not up to date and did not reflect the current features of the site. I appreciate that the Council does not appear to have requested further information in this regard. Nonetheless, I find it reasonable that, based on the evidence and information submitted with the application, the Council was unable to perform an appropriate arboricultural assessment of the impact of the proposal. In this context, I find that the Council took a reasonable approach to refuse permission based on the information submitted at that time.
21. Paragraphs 178 and 179 of the Framework set out that applications must demonstrate to the satisfaction of the local planning authority that the proposed site is safe, stable and suitable for development. Furthermore, Planning Practice Guidance (PPG) says that planning applications in the defined Development High Risk Area must be accompanied by a Coal Mining Risk Assessment.
22. The Coal Authority records show that within the appeal site and surrounding area there are mining features and hazards which must be considered as part of the assessment of this proposal. Accordingly, the appellant submitted coal mining information with the application. However, it is noted in evidence that the Coal Authority clearly considered this to be inadequate in addressing the impact of coal mining on the proposed site and development. As a result, the Coal Authority objected to the scheme, stating that an appropriate Coal Mining Risk Assessment, or equivalent, should be submitted to the Council.
23. The appellant argues that, in their view, the information provided was sufficient for the Council to make its decision and that this must have been the case as the Council validated the application. However, I note the Council's point that the application was validated only because information had been submitted and it was

subsequently discovered, in consultation with the Coal Authority during the application process, that the information was inadequate. Whilst such matters would, ideally, be addressed at the start of the application process, in this instance I find it reasonable that the Council started the application based on the details provided. Again, whilst the Council could have made a request for further information from the applicant, I find it reasonable for the Council to have assessed the proposal based on the evidence submitted with the original application.

24. It is argued that conditions could be attached to address deficiencies in information where approval of the scheme would be dependent on the satisfactory provision of the required information. Whilst this would be a pragmatic approach to take in the circumstances, I would agree with the Council that it would seem a little perverse to impose conditions and approve a scheme where the layout and details are likely to have been informed and determined by the originally submitted reports. It is entirely possible that, in light of the updated information provided as a result of those conditions, the submitted proposal could not be built out.
25. Therefore, having carefully considered the above, I find that the provision of the required supporting evidence at the start of the application process, or as close to the start as possible, is reasonable and necessary. I acknowledge the appellant's argument that communication with the Council during the application process regarding such matters was limited and problematic. Whilst this is unfortunate, and no doubt frustrating for the appellant, this is not a matter on which I am able to comment further and is most appropriately resolved between the parties.
26. As a result, from what I have seen and read, I consider the adequacy of the evidence and supporting information for the proposal relating to arboriculture and a coal mining risk assessment to be lacking. Accordingly, the Council was unable to undertake an adequate assessment of the proposal's impact on arboriculture and potential mining legacy issues. Consequently, I conclude that based on the evidence available at the time, the Council acted reasonably and appropriately by refusing planning permission for the proposal in the terms set out in its third reason for refusal.

Other Matters

27. During the appeal, the Council referred to Policy H9 of the LP relating to the development of garden areas. This is a late addition to the Council's case which did not feature in its original reasons for refusal. I note the reason for including this in its overall case and the appellant's response to its inclusion. However, whilst I have had regard to this as a material consideration, I give limited weight to it in my overall assessment of the proposal. In any event, its inclusion and consideration would not alter my overall conclusion. As such, I confirm that I have assessed the appeal scheme on the same basis as it was put to the Council and in the context of the Council's reasons for refusal.
28. I have had regard to other appeals referred to me in evidence. Whilst I have taken account of these as material considerations, they have limited weight in my decision making as I must assess the proposal before me on its own merits.

Conclusion

29. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A McCormack

INSPECTOR