



Appeal Decision

Site visit made on 28 May 2019

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 4th November 2019

Appeal Ref: APP/F2605/W/19/3221027

Ambleside, Brandon Road, Swaffham PE37 8HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Teresa Hooper against the decision of Breckland District Council.
 - The application Ref 3PL/2018/1267/O, dated 11 October 2018, was refused by notice dated 12 December 2018.
 - The development proposed is the demolition of an existing single storey dwelling and the erection of 4 no. dwellings.
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Decision

1. The appeal is allowed and outline planning permission is granted for the demolition of an existing single storey dwelling and the erection of 4 no. dwellings at Ambleside, Brandon Road, Swaffham PE37 8HL, in accordance with the terms of the application, Ref 3PL/2018/1267/O dated 11 October 2018, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

Application for costs

2. An application for costs was made by Ms Teresa Hooper against Breckland District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal seeks outline planning permission, with all matters reserved. I have considered the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative.
4. Since the Council took its decision and the appeal was made the Swaffham Neighbourhood Plan ("the NP") has been made. I have determined the appeal on this basis and the main parties have been provided with the opportunity to comment on this matter. I have taken any comments made in these respects into account in reaching my decision.
5. The appeal makes reference to the emerging Breckland Local Plan ("the eLP"). Whilst the eLP is at an advanced stage, it has not yet been formally adopted by the Council. Therefore in accordance with paragraph 48 of the National Planning Policy Framework (2019) ("the Framework"), whilst I have had regard to those policies I have not attached full weight to them in my consideration of this appeal.

6. The Council's second reason for refusal of permission refers to the proposal's effect on the privacy of the occupiers of No 1 Brandon Road. However, it is apparent from my site visit and from the evidence before me that the Council's concerns relate to the property No 1 Cygnet Walk. I have therefore determined the appeal on this basis.

Main Issues

7. The main issues are:

- The effect of the proposed development on the character and appearance of the area; and
- The effect of the proposed development on the living conditions of the occupiers of No 1 Cygnet Walk with regard to privacy.

Reasons

Character and appearance

8. The existing dwelling at the site is a bungalow of a generous size which follows the approximate building line set by the immediately adjacent modern dwellings. However, the wider estate of modern development along Brandon Road does not have a particularly uniform building line. The setback of dwellings is subject to some variation. A subtle staggered building line briefly results from the location of the bungalow and development to each side, however given the variation in the ages and design of the buildings concerned this does not appear to be a deliberate design feature.
9. The Cygnet Walk dwellings on the other side of the site are well set back from Brandon Road due to their intervening rear gardens. They consequently contribute further variation in the setback of dwellings from the road in the area.
10. The current bungalow occupies much of the breadth of the site. Its generous scale and location within the site result in an impression of unbroken built form in some views from the highway, when considered against its backdrop of further residential development. Despite this, its single storey scale prevents the bungalow from appearing overly dominant within the street scene.
11. Whilst the proposal is in outline only with all matters reserved, the illustrative plans show one pair of semi-detached dwellings facing Brandon Road in approximately the same position as the current bungalow, and a further pair positioned towards the rear of the site at right angles to the others. No other detailed scheme has been suggested, and I have identified no impediment to the development of the site as shown on the plans. I therefore consider that the illustrative plans provide evidence of a scheme that is capable of being advanced at the reserved matters stage.
12. Units 1 and 2 would lie in a similar position to the existing dwelling, albeit slightly closer to the road. Given the lack of a uniform building line in the vicinity and their approximate conformity with that set by the adjacent modern dwelling, their position within the site would not result in any significant harm to the character and appearance of the area. Furthermore, their location would allow for a strip of garden between the dwellings and the road, which would be in keeping with other development in the vicinity.

13. Whilst Units 1 and 2 would be two-storey, this scale would match that of other roadside development in the modern estate, with no resulting significant incongruity. Their effect in terms of prominence in the street scene is likely to be similar to that of the current building, because despite their greater height they would not occupy as much of the site's breadth, allowing for a drive to the side. A reduction in the impression of uninterrupted built form in views from Brandon Road is likely to result.
14. Accordingly, the proposed development would not harm the character and appearance of the area. It consequently complies with Policy DC2 of the Adopted Core Strategy and Development Control Policies Development Plan Document (December 2009) ("the CS"), which requires all residential proposals to secure an appropriate mix of dwelling size and type. Further compliance exists with Policy DC16 of the CS, which sets out that development should reinforce locally distinctive patterns of development and should complement the built form that surrounds it. Compliance also exists with Policy HBE2 of the NP, which requires new development to respect the scale, character, pattern, form and density of development of the surrounding area. Additional compliance exists with the provisions of the Framework with regard to design.

Living conditions

15. No 1 Cygnet Walk ("No 1") lies adjacent to the appeal site. A wooden fence lies between its rear garden and the walkway and side elevation to the appeal site's current bungalow. The bungalow lies in relatively close proximity to the relatively low fence, such that it would be possible for some overlooking of the rear garden to No 1 to occur from any windows within the bungalow's side elevation, despite its single storey height.
16. The side elevation to Unit 1 would face the rear garden to No 1, however it would be set some distance farther away from the fence than the current side elevation of the bungalow. Some views may be possible from any upper floor windows within the side elevation, however these would be at a sufficient distance not to have any significant harmful effect.
17. Oblique views may be possible from upper floor windows within the rear elevation to Unit 1, however these would be at a sufficient distance to minimise any effect on the privacy of users of the garden at No 1, and would additionally comprise only part of the garden.
18. Furthermore, there is nothing to suggest that arrangements sufficient to prevent any significant harmful effect on the living conditions of the occupiers of No 1 with regard to privacy could not be secured at the reserved matters stage.
19. Thus, the proposal would have an acceptable effect on the living conditions of the occupiers of No 1 Cygnet Walk with regard to privacy. The proposal therefore complies with Policy DC1 of the CS, which states that development will not be permitted where there are unacceptable effects on the residential amenity of neighbouring occupants with regard to overlooking.

Other Matters

20. An Ecological Assessment ("EA") of 10 October 2018 was submitted with the proposal. Evidence of bat activity was recorded within the roof void of the bungalow, and three emergence or re-entry surveys were carried out during

August and September 2018. A single brown eared bat was observed to emerge from the bungalow's roof space at the first survey. The assessment confirms the use of the property for roosting by the single bat. It determines that the site has a high suitability for roosting bats. There is, consequently, a reasonable likelihood that bats are using the site.

21. Bats are a protected species ("PS") under Schedule 5 of the Wildlife and Countryside Act 1981 and the EC Habitats Directive 1992, implemented in Great Britain by the Habitats Regulations. This makes it an offence to intentionally kill or injure bats, or to damage, destroy or obstruct access to their roosts.
22. The scheme proposes the demolition of the existing dwelling, which is used by bats for roosting. It would therefore potentially have an adverse effect on the PS. Accordingly, it is necessary for the development to conform with statutory species protection provisions affecting the site.
23. The Council proposes a pre-commencement condition requiring 3 further surveys and actions should any bat roosts be identified. The appellant considers that this condition is unnecessary and unreasonable.
24. Circular 06/2005¹ states that such surveys should usually be carried out before any grant of permission. Therefore it would generally be contrary to the guidance in Circular 06/2005 to grant permission subject to a condition that the appellant carry out a species or habitat survey prior to commencement of development.
25. There is nothing before me to suggest that the appeal proposal gives rise to circumstances so exceptional as to justify a departure from the provisions of Circular 06/2005 in respect of further surveys. Neither am I convinced that the proposed mitigation would be significantly different even if larger numbers of bats were identified at the site by any further theoretical surveys. I therefore conclude that the requested further surveys are unnecessary.
26. The submitted EA recommends mitigation including various measures to be undertaken by a licensed bat worker, the use of suitable roofing materials, the provision of bat boxes over the course of development works at the site and the use of sensitive lighting. It will additionally be necessary to apply to Natural England for a licence under Regulation 53 of the Habitats Regulations.
27. The proposed mitigation measures are partially in accordance with best practice guidance and are reasonable and adequate to secure the protection of any PS which may use the site. Accordingly, I am satisfied that any adverse effect on the PS can be overcome, and that it is necessary to secure the implementation of the proposed mitigation through the imposition of conditions.
28. Thus, I have amended the Council's suggested condition to remove the requirement for further bat surveys, and the parties have had the opportunity to comment on this amendment. The revised condition does not require further surveys to be undertaken, but requires adherence to the mitigation measures set out in the EA.

¹ Biodiversity and geological conservation – statutory obligations and their impact within the planning system (ODPM, August 2005)

29. Given the lack of further surveys and resulting potential for use of the site by additional bats to the single specimen already identified, the 3 bat boxes recommended by the EA should be installed prior to the commencement of development. The length of time between the EA and the start of development also gives rise to a requirement for the implementation of the measures in the EA which concern breeding birds, which may have commenced use of the site although not identified in the survey.
30. The external lighting mitigation measures which are recommended in the EA should be followed over the full course of construction. However, any provisions concerning the permanent external lighting scheme used in respect of the dwellings relate to appearance, which I have conditioned as a reserved matter. This measure consequently falls for consideration at that stage.
31. An interested party considers that the proposal would have an unacceptable effect on the living conditions of the occupiers of No 5 Mayfly Rd ("No 5") with regard to levels of sunlight within their dwelling and garden. It is additionally submitted that trees within the new gardens may cause inconvenience to users of the garden to No 5 due to leaf loss. However, only limited evidence of the effect of the proposal on these matters is before me.
32. Whilst the appellant is not tied to the illustrative plans and there may be alternative ways of developing the site, the plans indicate that there may be some limited loss of sunlight to the garden at No 5 at certain times due to the location of Unit 4 adjacent to the boundary between the 2 dwellings. However, this would only affect part of the garden, and a level of shadowing is already likely to be caused by the orientation of the garden in relation to the dwelling at No 5. Furthermore, a full explanation of the effect of the proposal on shadowing within the garden to No 5 throughout the year is not before me. As a result, the appeal evidence does not suggest that any additional shadowing to the garden to No 5 would be at a level throughout the year which would cause unacceptable harm to living conditions. Similarly, the evidence does not suggest that any additional leaf loss which may result from the proposal would cause unacceptable inconvenience to the occupiers of No 5.
33. The illustrative plans show a reasonable separation distance between the facing side elevations to Unit 4 and No 5. Furthermore, the side elevation to No 5 does not contain any windows, and any significant effects on levels of sunlight within the dwelling are consequently unlikely. As a result, I consider that the effect of the proposal on levels of sunlight to the dwelling at No 5 is likely to be acceptable.
34. The Council considers that Policy HBE1 of the NP is relevant to the appeal, but does not provide reasons for this. The policy requires an appropriate mix of type and tenure of housing within new residential development, which reflects the requirements of the Strategic Housing Market Assessment for the area. However, no evidence suggesting any conflict with this document is before me. Policy HBE1 therefore has limited relevance to the main issues of this appeal.

Planning Balance

35. The Council accepts that it cannot currently demonstrate a 5-year housing land supply. In such circumstances, paragraph 11.d) of the Framework indicates that the policies which are most important for determining the application are out-of-date. Permission should be granted unless any adverse impacts of

doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

36. There would be some economic uplift during construction through short-term employment and the purchase of building materials. Socially, the development would add to the supply of housing in a location with access to services and facilities. That would be in accordance with the Government's objective of significantly boosting the supply of homes. As set out above the proposal would not harm the area's character and appearance or the living conditions of adjacent occupiers, and I have not found environmental harm to result from any other aspect of the proposal. As a result, the environmental aspect of sustainable development would be achieved.
37. Thus, any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. Therefore the proposal would be a sustainable form of development when considered against the Framework taken as a whole.

Conditions

38. I have attached a condition relating to the submission of reserved matters in the interests of clarity.
39. Condition 4 is imposed in order to ensure the protection of any PS which may use the site or adjacent habitats. The condition is a pre-commencement condition in order to provide appropriate protection over the full course of development. The reasons for its divergence from the Council's suggested condition on the same matter are set out above.
40. I have imposed Condition 5 as it is necessary in order for the development to accord with the Council's policy relating to pollution and waste.
41. I have not imposed a condition specifying the relevant plans as the application is wholly in outline.
42. I have not imposed a condition requested by the Council which relates to landscape works, as I have conditioned this as a reserved matter. Therefore it is not necessary to impose further detailed conditions relating to this matter at this stage. Similarly, requested conditions relating to materials (appearance) and access are conditioned as reserved matters, and are therefore unnecessary at this stage.
43. I have not imposed a condition requested by the Council which would have removed certain permitted development rights associated with the proposed buildings. I am mindful of advice in the Planning Practice Guidance and I consider that the evidence does not demonstrate why removing such rights is necessary.

Conclusion

44. For the reasons given above, I conclude that the appeal should be allowed.

C Beeby

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall be carried out in accordance with the recommendations and proposed mitigation measures set out in Paragraphs 7.1-7.10 inclusive of the submitted Ecological Assessment (Philip Parker Associates, 10 October 2018) at all times. These shall include the provision of three suitable bat boxes prior to commencement and their retention for the duration of development, implementation of the measures concerning breeding birds and the incorporation of integral bat roosting boxes on three of the dwellings.
- 5) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.