



Appeal Decision

Site visit made on 17 December 2019 by L Wilson BA (Hons) MA

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th January 2020

Appeal Ref: APP/X4725/W/19/3238044

Arborfield, South Lane, Netherton, Wakefield WF4 4LW

- 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 Michelle Chambers against the decision of Wakefield Metropolitan District Council.
 - The application Ref 18/01453/FUL, dated 25 June 2018, was refused by notice dated 4 July 2019.
 - The development proposed is described on the application form as demolition of existing detached dwelling and garage and erection of 3 No. detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing detached dwelling and garage and erection of 3 No. detached dwellings at Arborfield, South Lane, Netherton, Wakefield WF4 4LW in accordance with the terms of the application, Ref 18/01453/FUL, dated 25 June 2018, and the plans submitted with it, subject to the attached schedule of conditions.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Application for Costs

3. An application for costs was made by the appellant against the Council. This application is attached as a separate Decision.

Main Issue

4. The effect of plot 1 on the living conditions of the occupants of Barley Court, with particular reference to outlook.

Reasons for the Recommendation

5. Arborfield is a two-storey detached dwelling situated within a large plot. Located towards the front of the appeal site is a detached double garage. The surrounding area is characterised by residential properties. There are a mix of bungalows and two-storey dwellings within the street scene which vary in age and design.
6. The neighbouring dwelling, Barley Court, is a bungalow. There is not a significant difference in land levels between the two sites. It is clear from the

evidence provided that the Council is only concerned with respect to the side window of Barley Court which faces the appeal site. The two main parties agree that the side window serves a bedroom. The side window would face the single storey element of plot 1 which would contain secondary kitchen windows. Barley Court's windows are of a good size which provide the existing occupants with a high standard of amenity. The boundary treatment between the appeal site and Barley Court consists of a low boundary wall. Consequently, the side window currently overlooks Arborfield's garden.

7. As highlighted by the Council, the Residential Design Guide (2018) (RDG) advises that a distance of at least 9 metres is required between a secondary and side aspect window in order to protect residential amenity. The RDG outlines that windows to bedrooms are defined as 'secondary aspect' and windows to kitchens are 'side aspect'. I note the RDG is guidance rather than a fixed policy requirement. The Council consider that the separation distance proposed between the single storey element of plot 1 and Barley Court would be approximately 4 metres and the distance to the two-storey element would be 7.5m. The appellant considers the distances are marginally greater and would be 4.36m and 7.86m respectively. Whatever the precise measurement it would be below the 9m requirement of the RDG.
8. However, whilst the RDG provides useful guidance, the 9m distance does not take into account site specific circumstances and applies to two storey houses. The RDG highlights that greater distances may be required where there are changes in level and where the proposal relates to a building of three or more storeys. It would therefore be reasonable to assume that a smaller distance would be acceptable where a development is single storey and in instances where a proposal effects a secondary bedroom window.
9. The proposal would not result in a significant loss of outlook from the window. This is due to the closest element of plot 1 being single storey, the bedroom of Barley Court is served by at least one other window and the side window is not the primary main window. Thus, the main outlook from the bedroom is not obtained from the side window and the principal window would continue to provide an open outlook and suitable levels of light regardless of any impact from views to the side. In any event, there would be adequate distance between plot 1 and the side window of Barley Court to ensure that the scheme would not have an overbearing, oppressive nor dominating impact.
10. For those reasons the proposed development would not have an unacceptable effect on the living conditions of the occupants of Barley Court. Accordingly, it would not conflict with Policy D9 of the Local Development Framework: Development Policies (2009) (LDF), the RDG and the National Planning Policy Framework. Collectively, these Policies seek, amongst other matters, to ensure new development does not detrimentally impact upon the amenity of existing residents.
11. The Council has referred to Policy D10 of the LDF in its reason for refusal. However, this policy relates to extensions and alterations to dwellings which is not what the development before me is. I therefore give this policy very little weight in my decision.

Other Matters

12. I note the appellant has referred to a recently approved lawful development certificate for a single storey side extension and new boundary fence¹. However, given that I have found the development would not be harmful to the living conditions of the occupants of Barley Court I do not need to consider the fall-back position².
13. Local residents have expressed a range of concerns regarding the proposal's impact upon: highway safety, the character and appearance of the area and living conditions of existing and future occupiers. I note that the Council did not refuse the planning application on these matters and the scheme has been revised since some of the objection comments were submitted to the Council.
14. To ensure that the proposal would be acceptable, in relation to highway safety, a Highways Officer sought amendments. The scheme was adequately amended to overcome the Highway Officer's concerns. No substantive evidence has been submitted to demonstrate that the proposal would have an unacceptable impact on highway nor pedestrian safety and I see no reason to reach a different view to the Council in that respect.
15. In terms of the impact upon the character and appearance of the street scene, having regard to density, the site is large enough to accommodate the proposed development without causing harm. Whilst the appeal property is distinctive, the appeal site is larger than the majority of neighbouring plots, particularly in comparison to those to the north and west. Properties within the area appear to have been built at different points in time and therefore there is not a coherent pattern of development. Consequently, the demolition of the existing property would not be detrimental to the established character of the area.
16. I also agree with the Council that the scheme would not harm the living conditions of the occupants of properties within Brookfields due to the separation distance. Additionally, the scheme would not significantly reduce the amount of light reaching the side of Barley Court due to the side window being north facing and the distance between Barley Court and the proposed dwellings. The side windows of plot one can be conditioned to ensure that they are fitted with obscure glazing and would not overlook Barley Court. Any noise and disturbance to neighbouring residents during construction is inevitable but would be temporary and, accordingly, does not amount to a reason to withhold planning permission.
17. Similarly, the development would provide acceptable living conditions for future occupiers. The size of the garden areas proposed would be adequate for each plot and would not have a significant detrimental impact upon the environment compared to the existing garden. From the evidence before me, the site is not subject to any tree preservation orders and soft and hard landscaping can be controlled by a planning condition.
18. The issue of impact on property values has also been raised. However, any effect of the development on property values is not a matter for me to consider as the planning system operates in the public interest and does not seek to protect private interests.

Conditions

¹ 19/00843/CPL

² The appellant refers to the case of *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314.

19. The Council has not provided any conditions which they consider should be imposed. Conversely, the appellant has suggested four conditions which have been assessed in light of guidance found in the Planning Practice Guidance and where necessary have been amended for clarity and precision.
20. In addition to the statutory commencement condition a condition is necessary in the interests of certainty to ensure that the development is carried out in accordance with the approved plans. In the interest of visual amenity, conditions relating to materials and landscaping are also required. The landscaping condition includes a requirement to provide details of a charging point for an electric vehicle which would be reasonable in order to reduce the impact of vehicular emissions in line with the Framework. I have also included a requirement to include details of proposed boundary treatments as part of the landscaping condition. An interested party has referred to the natural stone wall along the boundary of the site which does form an attractive outer boundary. It is not clear from the proposed plans if that wall is intended to be retained but the landscaping scheme could include details of the retention or a suitable alternative, details of which would need to be agreed with the Council. As set out above, a condition is considered necessary to ensure that the side kitchen windows in plot 1 are fitted with obscured glazing in the interest of safeguarding living conditions of residents of Barley Court.

Conclusion and Recommendation

21. For the reasons given above I recommend that the appeal should be allowed.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

22. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree and conclude that the appeal should be allowed subject to the conditions attached.

Chris Preston

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A1-01, A1-05 Revision A, A2-03, A2-04, A2-05, A2-06, A4-01, A4-02, A4-03 and A4-04.
- 3) No development above slab level shall take place until details of the materials to be used in the construction of the external surfaces have been submitted to and agreed in writing by the local planning authority. The development shall be constructed in accordance with the approved details.
- 4) No development above slab level shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i. Materials;
 - ii. Details of proposed boundary treatments, including any boundaries to be retained during the course of development;
 - iii. The arrangements for storage of refuse (including provision for the storage of recyclable materials);
 - iv. The arrangements for electric car charging points;
 - v. The arrangements for bicycle storage;
 - vi. Schedules of plants noting species, plant supply sizes and proposed density.

The approved details shall be carried out before any of the dwellings hereby approved are first occupied and thereafter retained. The approved soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the first dwelling or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 5) Plot 1 of the development hereby permitted shall not be occupied until the side elevation kitchen windows have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.



Costs Decision

Site visit made on 17 December 2019 by L Wilson BA (Hons) MA

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date:

Costs application in relation to Appeal Ref: APP/X4725/W/19/3238044 Arborfield, South Lane, Netherton, Wakefield WF4 4LW

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Michelle Chambers for a full award of costs against Wakefield Metropolitan District Council.
 - The appeal was against the refusal of planning permission for the demolition of an existing detached dwelling and garage and erection of 3 No. detached dwellings.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The application for an award of costs, the Council's response and the applicant's further response were submitted in writing and the content will be familiar to both parties. Consequently, I shall not repeat those submissions in full within this decision. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The applicant seeks a full award of costs on the basis that the Council's decision was unsubstantiated as it was not supported by adopted planning policy or relevant Supplementary Design Guidance and thus acted unreasonably. Furthermore, they consider that the Council did not give appropriate weight to the fall-back position, taking into account a High Court Judgement submitted as part of the Appeal Statement.
4. The application required an exercise of planning judgement and my Decision above explains why I have found favour with the applicant's case. It is clear within the Officer's Report that the Council has considered the fall-back position when determining the application and they took into account the High Court Judgement in their Appeal Statement. The refusal reason was clear and sufficient evidence was submitted to support the Council's policy stance. The fact that my recommendation went against the Council is not evidence of unreasonable behaviour. The matter was finely balanced and the Residential Design Guidance referred to by the Council does seek to maintain adequate

separation between residential properties. Taking account of the site-specific circumstances my recommendation was that the proposed development would have an acceptable impact but it was not unreasonable for the Council to have a different view having regard to the nature of the case.

5. The applicant has not shown that the Council's refusal of planning permission was unreasonable. In the absence of any unreasonable behaviour there are no grounds for an award of costs and a full or partial award is unjustified.

L M Wilson

APPEALS PLANNING OFFICER

Inspector's Decision

6. I have considered all the submitted evidence and the Appeal Planning Officer's report, for all the above reasons, I concur that this application should be refused.

Chris Preston

INSPECTOR