



Appeal Decision

Site visit made on 17 December 2019

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

Appeal Ref: APP/H2733/W/19/3238253

Tara, 9a East Lea View, Cayton, Scarborough, North Yorkshire YO11 3TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 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 Mrs E Scott against the decision of Scarborough Borough Council.
 - The application Ref 19/01075/FLA, dated 10 May 2019, was refused by notice dated 10 July 2019.
 - The application sought planning permission for erection of 1 no. two bedroom detached single storey dwelling, detached garage, shed & greenhouse without complying with conditions attached to planning permission Ref 18/02744/FL, dated 11 January 2019.
 - The conditions in dispute are Nos 1 and 4 which state that: '1) The development shall be carried out in accordance with the following plans and drawings: 'proposed plans and elevations', ref: 8015-W8-00-ZZ-DR-A-2001-S4-PO2 received by the Council 19 November 2018.' And '4) Prior to the first use of the dwelling the access to the site shall be set out and constructed in accordance with the following requirements: The crossing of the highway verge shall be constructed in accordance with Standard Detail number E6W; Any gates or barriers shall be erected a minimum distance of 6 metres back from the carriageway of the existing highway and shall not be able to swing over the existing or proposed highway; The final surfacing of any private access within 6 metres of the public highway shall not contain any loose material that is capable of being drawn on to the existing highway.'
 - The reasons given for the conditions are: '1) To avoid doubt'. And '4) To ensure highway access is properly designed for in accordance with policy DEC1 of the Local Plan.'
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Decision

1. The appeal is allowed and planning permission is granted for erection of 1 no. two bedroom detached single storey dwelling, detached garage, shed & greenhouse, at Tara, 9a East Lea View, Cayton, Scarborough, North Yorkshire YO11 3TN in accordance with application Ref 19/01075/FLA dated 10 May 2019 without compliance with conditions Nos 1 and 4 previously imposed on planning permission Ref 18/02744/FL, dated 11 January 2019, and subject to the conditions set out in the schedule attached.

Procedural Matters

2. The site visit procedure was altered from an access required site visit to an unaccompanied site visit as the appellant was not present when I arrived at the appeal site during the pre-arranged period. However, I was able to see the relevant parts of the site and consider the main issue on this basis.

3. The appellant has submitted an additional plan as part of the appeal which illustrates the position of the gates to the appeal site set 6 metres (m) back from the carriageway of the existing highway. I have accepted this plan on the basis that it does not evolve the scheme in any way and is for information purposes only. I am satisfied that no interested party has been prejudiced by this approach.

Background and Main Issue

4. The appellant has sought to vary/remove conditions 1 and 4 of the approved application¹. Condition 1 relates to the approved plans. The appellant requests a change to allow for an increase in the roof pitch and maximum height of the proposed dwelling by 500millimetres. The Council has no issues with this change with respect to good design, character and appearance of the area or the living conditions of occupiers of neighbouring properties and, taking into account the design of the proposed dwelling and the context of the site, I have no reason to disagree.
5. Condition 4 relates to highway requirements and was imposed at the request of the Highways Authority. The appellant requests the removal of part of this condition which requires that any gates or barriers to the appeal site for both the existing property (No 8a East Lea View) and the proposed dwelling (No 9a East Lea View) which are both included within the red line boundary, 'shall be erected a minimum distance of 6m back from the carriageway of the existing highway', and to allow the gates to be sited closer to the highway as shown on plan 8015W8-00-ZZ-DR-A-2001-S4-P03.
6. Although not cited by the Council in the reason for the imposition of condition 4, Policy DEC4 of the Scarborough Borough Local Plan (LP) adopted 2017, which seeks to protect the amenity of existing and future occupants of land and buildings, was included in the reasons for refusal of the application which is the subject of this appeal.
7. Taking the above into account, the main issue is the effect that removing the requirement in condition 4 for any gates or barriers to be erected a minimum distance of 6m back from the carriageway of the existing highway would have on (i) highway safety and (ii) the living conditions of the occupiers of neighbouring properties, with regard to disturbance.

Reasons

8. The appeal site is located at the eastern end of East Lea View and its development creates a cul-de-sac arrangement. East Lea View is a short, narrow road with pavements on both sides and where vehicular movement is slow. Short rows of two storey terraced houses sit either side of, and set back from, the road. I noted on site that several of the occupiers of these properties have created off-road parking areas in front of their houses.
9. Policy DEC1 of the LP seeks to promote the principles of good design and states that all development will be required to demonstrate that, amongst other things, it provides suitable and safe vehicular access and suitable servicing and parking arrangements.

¹ Ref 18/02744/FL

10. The requirement as stated in condition 4 for any gates or barriers to be erected a minimum distance of 6m back from the carriageway of the existing highway, was to ensure that any existing or future occupiers of Nos 8a and 9a East Lea View could park off the highway whilst opening their gates and would not obstruct the access for other existing or future residents to their properties. It is contested by the Council that positioning the gates closer to the highway would mean that vehicles would likely need to park in front of other houses, mainly Nos 8 and 9 East Lea View, and block vehicular access to these properties whilst the gates in question were opened to facilitate access into the site.
11. I acknowledge the residential cul-de-sac nature of the street and the necessity to provide suitable and safe access into the site. However, in my opinion, given that the access is for only two properties, the number of times per day that any possible obstruction would occur would be minimal and would only be for a very short period of time. In this respect, it would not lead to any unacceptable impacts on highway safety. Indeed, it was apparent from my site visit that, due to the very open nature of the off-road parking areas to the front of Nos 8 and 9 East Lea View, it would be likely that any existing or future occupiers of these neighbouring properties would be able to access at least part of their parking areas even if a car was parked on the highway while accessing or exiting Nos 8a or 9a East Lea View.
12. Furthermore, it is evident that this requirement would mean that the appellant or any future occupier of No 9a East Lea View would not be able to turn their vehicle around within the site. This would result in them having to reverse into or reverse out of the site, which would potentially have implications for highway safety.
13. Policy DEC4 of the LP seeks to protect the amenity of existing and future occupants of land and buildings and states that development should not give rise to unacceptable impacts including, disturbance arising from such things as noise, light pollution and other activities.
14. I appreciate the Council's concerns that positioning the gates closer to the highway may become a 'flashpoint' between neighbours and harmful to their amenity. However, as outlined above, given the context of the site, I consider that any possible obstruction would be minimal in number and limited in time. As such, the potential for any neighbour conflict would be negligible and it would be very unlikely to give rise to any unacceptable levels of disturbance.
15. I note that the appellant and the occupier of No 8a East Lea View are willing to install electronic gates to reduce the time that any possible obstruction would occur. This would appear to be a sensible approach and would go some way to address the Council's concerns. This is something which could be agreed as part of the submission of details of the boundary treatment.
16. Accordingly, I conclude that removing the requirement in condition 4 for any gates or barriers to be erected a minimum distance of 6m back from the carriageway of the existing highway would not have a harmful effect on highway safety and would not have an unacceptable impact on the living conditions of the occupiers of neighbouring properties, with regard to disturbance. As such, it would comply with Policies DEC1 and DEC4 of the LP. It would also be in accordance with Paragraph 109 of the National Planning Policy Framework which states that development should only be prevented or refused

on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

17. The Highway Authority commented that No 8a East Lea View also had a gate position conditioned to be set back 6m from the carriageway edge and that it would be unreasonable to have different gate positions on a shared access. As stated above, this appeal relates to the accesses to both Nos 8a and 9a East Lea View and so the position of the gates would be the same.

Conditions

18. As a section 73 application cannot be used to vary the time limit for implementation² and for the avoidance of doubt, I have specified the date by which the permission shall be begun. I have imposed a condition specifying the relevant drawings to which this approval relates as this provides certainty.
19. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission unless they have already been discharged³. The Council has stated the application reference for the discharge of the condition for the walling and roofing materials. Therefore, I have imposed a condition to this effect to ensure a good standard of design and to preserve the character and appearance of the area.
20. To ensure a good standard of design and to preserve the character and appearance of the area, I have re-imposed the condition of the original permission relating to fenestration stating the application reference.
21. In the interests of good design and highway safety, I have imposed a condition requiring the submission of details of the gates and boundary treatment as referred to on the approved plan and requiring its retention thereafter.
22. For the reasons stated above and to ensure good design and highway safety, I have varied the condition relating to the access to the site. I have removed the requirement that any gates or barriers to the site shall be located a minimum distance of 6m back from the carriageway of the existing highway and included that they shall not open over the public highway.

Conclusion

23. For the reasons given above, I conclude that the appeal should be allowed. A new planning permission is granted subject to the schedule of conditions listed.

F Cullen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 11 January 2022, which is the expiration date of the original planning permission ref 18/02744/FL.

² Paragraph: 015 Reference ID: 17a-015-20140306 of the National Planning Practice Guidance

³ Paragraph: 015 Reference ID: 17a-015-20140306 of the National Planning Practice Guidance

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 8015-W8-00-ZZ-DR-A-2001-S4-P03, proposed plans and elevations; and 8015-W8-00-ZZ-DR-A-2002-S4-P02, proposed garage.
- 3) The walling and roofing materials for the buildings shall be as per the details approved by Scarborough Borough Council under discharge of conditions approval ref: 19/00900/COND allied to planning permission ref: 18/02744/FL.
- 4) The fenestration materials shall be as specified in part 7 'materials' of the submitted application form for planning permission ref: 18/02744/FL issued by Scarborough Borough Council.
- 5) Elevation drawings of that part of the development identified on approved drawing 8015-W8-00-ZZ-DR-A-2001-S4-P03 as 'timber entrance gates, brick boundary walls with brick piers & timber panel infills' at a scale of no less than 1:50 shall be submitted to and approved in writing by the Local Planning Authority prior to that part of the development commencing. The development shall be implemented in accordance with the approved details and retained thereafter.
- 6) Prior to the first use of the dwelling the access to the site shall be set out and constructed in accordance with the following requirements:
 - The crossing of the highway verge shall be constructed in accordance with Standard Detail number E6W;
 - Any gates or barriers erected shall not open over the public highway;
 - The final surfacing of any private access within 6 metres of the public highway shall not contain any loose material that is capable of being drawn on to the existing highway.

End of Schedule of Conditions