
Appeal Decision

Site visit made on 14 July 2020

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2020

Appeal Ref: APP/H1033/W/20/3248119

Birchwood, 2 Jubilee Gardens, New Mills SK22 4PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Malan Developments against High Peak Borough Council.
 - The application Ref: HPK/2019/0360, is dated 9 August 2019.
 - The development proposed is the demolition of the existing bungalow and the erection of 4 no 3 bedroom houses.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing bungalow and the erection of 4 no 3 bedroom houses at Birchwood, 2 Jubilee Gardens, New Mills SK22 4PL in accordance with the terms of the application, Ref: HPK/2019/0360, dated 9 August 2019, subject to the conditions in the attached schedule.

Procedural Matter

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has submitted an appeal statement which sets out its objections. As this concerns the matters of dispute with the appellant, it forms the basis of the main issue in this case.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of the occupiers of 4 and 12 to 16 Jubilee Gardens (Nos 4, 12 to 16) by way of visual impact, light and privacy.

Reasons

4. The appeal site consists of a bungalow, various outbuildings and associated land that is found on a fairly large plot. No 4 lies to the west of the site and is set at a lower land level. The boundary is defined by a wall and fence arrangement. The parking area of No 4 lies next to the boundary. The house is found beyond, which angles back behind a front projecting element. To the rear of the parking space is a domestic outbuilding and the rear garden.
5. The side of the proposed dwelling nearest No 4 would be well set in from the boundary, with the proposed parking area for this dwelling located in the space

in between. The occupiers of No 4 would clearly be aware of its presence because of the height of the proposed dwelling's side wall and the difference in ground levels. However, when the distance to the side of the house at No 4 is considered, including the spacing provided by the properties' respective parking areas, the effect would not be to the extent that it would be dominant or overbearing.

6. Hence, the separation would result in the visual impact not being unacceptable. The proposed dwelling would also be forward of the rear garden of No 4 and so it would also not cause an undue effect in this regard.
7. Similarly, when this separation distance is considered, the light levels that No 4 receives to this side of the property would not be unduly diminished. The level of overshadowing and loss of sunlight would be of a limited extent and, even when this would occur, it would be likely to be restricted to up to mid to late morning, when the relationship with the proposed dwelling is considered. Privacy levels would also be satisfactorily protected because the proposed small first floor window that would face towards the side of No 4 and its openings would not relate to a habitable room.
8. Nos 12 to 16 form part of a short terrace of 2 storey properties which lie to the rear of the site. They have modest sized rear gardens with rear elevation windows facing towards the site. They are also set at a lower ground level.
9. The Council's Residential Design Supplementary Planning Document (2005) (SPD) states that, as a guide, a distance of 21 metres (m) between habitable room windows of adjacent properties will provide an acceptable level of amenity, a distance that should increase by 1m for every 0.5m difference in height. It also confirms that a more flexible approach based upon design principles, rather than standards, will be considered.
10. The distances that the proposal would achieve to Nos 12 to 16 would not meet these standards according to the Council, although this is disputed by the appellant. If a shortfall would occur, it would seem to be due to the modest distances from the rear elevations of Nos 12 to 16 to the site boundary. In contrast, the proposed dwellings and the associated rear elevation habitable room windows would be well set back from the boundary.
11. Also with regard to the SPD, as a design principle, the proposed layout would seek to maximise the distances to Nos 12 to 16 by siting the proposed dwellings towards the site frontage. This would limit the degree of overlooking so that it would not be untoward. The ground levels difference is also not so great so as to alter my view. With the separation distances involved, the visual impact and effect on light to Nos 12 to 16 would also be satisfactory.
12. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of Nos 4, and 12 to 16 by way of visual impact, light and privacy. As such, it would comply with Policies S1, S1a and EQ6 of the High Peak Local Plan Adopted April 2016 where they are concerned with a high standard of amenity for all existing and future occupants of land and buildings, securing development that improves the social and environmental conditions in the area, and that development achieves a satisfactory relationship to adjacent development and does not cause unacceptable effects by way of visual intrusion, overlooking, shadowing and an overbearing effect, amongst other considerations.

13. It would also comply with the intentions of the SPD as it would provide adequate privacy to the occupiers of the existing dwellings. It would also accord with paragraph 127 of the National Planning Policy Framework where it concerns a high standard of amenity for existing and future users.

Other Matters

14. The proposal was subject to amendments whilst the Council were dealing with the planning application that were related to matters of highway safety. The Highway Authority considered that the proposed access, shared driveway and off-street parking spaces serving the proposed dwellings on plots 2 to 4 met its design criteria. In respect of the access serving plot 1, it considered that visibility should be demonstrated and suggested a condition to the Council in this respect. I see no reason to disagree with the approach of the Highway Authority and this is not a matter of dispute with the Council. Nor would the proposal seem to inhibit the passage of emergency vehicles in the area, with the parking and turning provided on-site.
15. As regards the effect on the living conditions of the occupiers of the neighbouring properties from the proposed parking arrangements, with the likely traffic generation and the domestic nature of the vehicular movements, noise and disturbance levels would not be unacceptable.
16. The residential properties on the Jubilee Street side of the site are well set back from the boundary, with their rear gardens in between. The footprint shape of the nearest proposed dwelling also reflects the angled nature of the boundary and would be stepped in slightly. This would further reduce the effect on the rear gardens by way of light. The effect on the living conditions of the occupiers of those properties would not be unacceptable. In addition, as the proposal is for a modest sized housing development, any local disruption during construction should be for a limited duration only.
17. In respect of the height of the proposal in character and appearance terms, there are already a number of properties that are 3 storeys or more in the vicinity of the site. The maintenance of the existing boundary treatment is a matter for the respective landowner(s) and the effect on property values is also not an issue for my consideration. The same applies as regards how the Council dealt with the planning application, prior to the submission of the appeal. Consequently, these matters have a limited bearing on my decision.

Conditions

18. In addition to the timescale for implementation, I have imposed a condition concerning the approved plans for the purposes of certainty, excluding a street elevation plan which is indicative in nature. I have also imposed a condition by way of the external materials as shown on the submitted plans. This is in order to protect the character and appearance of the area.
19. I have imposed a condition in line with Highway Authority advice concerning the visibility splays, as well as conditions to ensure that access, the turning area and parking spaces are implemented, and that adequate waste storage arrangements are made. These conditions are imposed in the interests of highway safety and public health.
20. Conditions are also imposed concerning land contamination, soil sampling, piling and asbestos, also in the interests of public health. Conditions are also

imposed in relation to drainage details, in the interests of satisfactory drainage and minimising flood risk, and by way of the submitted boundary treatment and landscaping matters, in the interests of protecting the character and appearance of the area.

21. I have applied pre-commencement conditions in respect of visibility splays, land contamination, asbestos and drainage details. These are matters that need to be agreed prior to development commencing as they would likely have to be addressed before, or at the start of, the construction phase. Hence, there is a clear justification.
22. As the proposal is for a modest sized housing development, a condition requiring a construction management plan would not be reasonable and necessary. The removal of permitted development rights by way of a condition would also not be justified. The Planning Practice Guidance advises that the removal of such rights should only be used in exceptional circumstances. Such circumstances do not apply in this case, based on the evidence before me. Hence, such a condition would not be reasonable and necessary. Where I have altered the wording of the remaining conditions put forward by the Council, I have done so in the interests of precision without changing their overall intention.

Conclusion

23. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

Darren Hendley

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: SK101 P1 Location Plan, SK104 P2 Proposed Site Plan, SK105 P1 Proposed Boundary Treatment, SK106 P3 Typical House Plans – Plots 1-3, SK07 P1 Typical House Section, SK108 P2 Plots 1-2 House Elevations, SK110 P1 Plots 3-4 House Elevations, SK111 P2 Plot 4 House Plans
- 3) The development hereby permitted shall be implemented in accordance with the materials to be used in the construction of the external surfaces as shown on plans SK108 P2 and SK110 P1.
- 4) Prior to the commencement of the development hereby permitted the proposed vehicular accesses shall be formed to Jubilee Gardens and provided with exit visibility sightlines in accordance with a scheme first submitted to and approved in writing by the Local Planning Authority. The area in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to adjoining nearside carriageway channel level.
- 5) The development hereby permitted shall not be occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.
- 6) Notwithstanding condition 2, the development hereby permitted shall not be occupied until the arrangements for storage of bins and collection of waste have been carried out in accordance with details that have been previously submitted to and approved in writing by the local planning authority. The approved arrangements for storage of bins and collection of waste shall thereafter be maintained.
- 7) The development hereby permitted shall not commence until a site risk assessment has been undertaken in order to assess the nature and extent of any contamination on the site in accordance with a scheme first submitted to and agreed in writing with the Local Planning Authority. Once completed, a written report of the findings and recommendations shall be submitted and approved in writing by the Local Planning Authority.

If the site risk assessment indicates that potential risks exist, development shall not commence until a detailed remediation strategy to bring the site to a condition suitable for the intended use has been prepared, and is subject to the approval in writing by the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme and prior to bringing the development into first use, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 8) No top soil is to be imported to the site unless or until it has been tested for contamination and assessed for its suitability for the proposed development; a suitable methodology for testing this material should be submitted to and agreed by the Local Planning Authority prior to any soils being imported onto site. The methodology should include the sampling frequency, testing schedules, criteria against which the analytical results will be assessed (as determined by the risk assessment) and source material information. The analysis shall then be carried out and validity evidence submitted to and approved in writing by the Local Planning Authority.
- 9) No piling shall take place until a method statement has been submitted to and approved in writing by the Local Planning Authority. This method statement should be in line with Environment Agency guidance (Environment Agency (2001), Piling and Penetrative Ground Improvements on Land Affected by Land Contamination NC/99/73). The effects of noise generation should also be considered, and should include noise mitigation measures consistent with best practical means. The development shall be implemented in accordance with the method statement. No piling shall take place outside the hours 09:00 hours to 16:00 hours Mondays to Fridays.
- 10) Prior to the commencement of the development hereby permitted evidence shall be submitted to and approved in writing by the Local Planning Authority that either demonstrates that the building was built post 2000 or includes an intrusive pre-demolition asbestos survey in accordance with HSG264 and a mitigation plan to reduce risks to potential occupiers and the wider public. The development shall be carried out in accordance with the approved mitigation scheme.
- 11) No development shall commence until the foul and surface water drainage works have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the drainage works have been completed in accordance with the approved details and shall be maintained thereafter.
- 12) The development hereby permitted shall not be occupied until the boundary treatment has been implemented in accordance with the details as shown on plans SK104 P2 and SK105 P1 and shall thereafter be maintained.
- 13) No development above foundation level shall commence 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) indications of all existing trees and hedgerows on the land;
 - ii) details of any to be retained, together with measures for their protection in the course of development;

- iii) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads, and other works;
 - iv) earthworks showing existing and proposed finished levels or contours;
 - v) vehicle parking layouts;
 - vi) other vehicle and pedestrian access and circulation areas; and
 - vii) hard surfacing materials.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and 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. All hard landscaping shall also be carried out in accordance with the approved details prior to the development and thereafter be maintained.