



Appeal Decision

Site visit made on 21 July 2020

by J P Longmuir BA (Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2020

Appeal Ref: APP/E3715/W/20/3248123

Pool House, Rugby Road, Brandon CV8 3GJ

- 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 Mr Clark Ikingill against the decision of The Rugby Borough Council.
 - The application Ref R20/0062, dated 27 January 2020, was refused by notice dated 19 February 2020.
 - The application sought planning permission for the erection of three dwellings with associated access and parking without complying with a condition attached to planning permission R16/1724 dated 5 May 2017.
 - The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any order revoking or re-enacting those orders, no development shall be carried out which comes within Classes A-H of Schedule 2 Part 1 of the Order without the prior written permission of the Local Planning Authority.
 - The reason given for the condition is: in the interest of residential amenity.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of three dwellings at Pool House in accordance with the application Ref 20/0062 dated 27 January 2020, without compliance with condition No 4 previously imposed on planning permission Ref R16/1724 dated 21 November 2016 and subject to the conditions in the schedule of conditions at the end of this decision.

Main Issue

2. The main issue is whether the condition is necessary and reasonable having regard to the living conditions of the occupants of the new dwellings and the neighbours.

Reasons

3. The development is almost complete with two dwellings occupied and the third undergoing internal works. Two of the houses are detached and two storey, in alignment with the discernible building line along Rugby Road, with spacious front gardens but almost no rear gardens. Behind these two houses, is the third dwelling, a bungalow. The access has been laid out as a private drive to the rear of the 2 storey houses and the side of the bungalow.

4. The neighbour to the north-west of the appeal site, The Croft, is segregated by vegetation and significantly distanced in its own environs.
5. To the south-east of the appeal site, there are two other dwellings: Sunnyside and Braemar. Sunnyside is sited parallel to the 2 storey dwellings. Consequently, any extension or changes under Classes A, B, C, D of the Town and Country Planning (General Permitted Development) Order 2015 (the Order) would only protrude beyond the building line as specified by the Order. Furthermore, any extension or change would be unlikely to be overly large so as to jeopardise neighbouring living standards. The original permission was subject to conditions 5 and 6 to control future side windows which could be maintained.
6. Classes E and F allow outbuildings and hardstandings. However the two storey dwellings have virtually no space for any such additions and the bungalow would be sufficiently distanced from any other dwelling to avoid significant implications, because the outbuildings are subject to defined restrictions in the Order including size and siting, and hardstandings would be at existing ground level. Classes G and H allow flues and microwave antenna but the above Order places stringent controls to ensure their neighbourliness: the juxtapositions of the three appeal dwellings and Sunnyside and Braemar are not significantly close to cause potential problems.
7. The bungalow is to the rear of Sunnyside and Braemar, but their occupants' living standards would not be impaired by changes to the rear of the bungalow as these would only be low height.
8. The occupants of the new development would also not be harmed by adaptations to any of the dwellings. As I have found above the living conditions of the occupants of Sunnyside and Braemar would also not be harmed.
9. The relative siting, density and design of the dwellings is not unusual, and the permitted development rights regime has been conceived to allow the reasonable adaption of dwellings. I therefore find that 'residential amenity' would not be prejudiced. Rugby Borough Council Local Plan Policy SDC1 seeks to safeguard living standards and the proposal does not conflict with this policy.
10. Paragraph 55 of the National Planning Policy Framework (the Framework) describes the tests for conditions. The Planning Practice Guidance (PPG) emphasises that the tests must be applied rigorously. Moreover, the PPG is very cautionary over the removal of permitted development rights. I therefore find that the condition is unnecessary and would be unreasonable. Accordingly, the condition fails the tests in the Framework and PPG.

Conditions

11. This appeal would effectively create a new planning permission and the original conditions need to be re-imposed if they are appropriate in the current circumstances whilst also noting the tests in paragraph 55 of the Framework.
12. Conditions 1, 2 and 3 of the original permission relate to implementation and materials and as the development has been completed, they are no longer necessary. Similarly, conditions 8, 9 and 10 refer to pre-commencement submissions and measures which are not necessary at this stage.

13. Condition 5 refers to the control of side windows in the future and would need to be retained. Whilst there is some allowance under permitted development rights, this condition would ensure more widespread control of windows which would help privacy. Condition 6 controls re-glazing in the future which is similarly necessary, however conditions 5 and 6 are re-worded for clarity and to reflect the stage of development. Condition 7 removes permitted development rights for boundary treatments and this is considered necessary to ensure privacy. Condition 11 prevents future accesses on to the road and is necessary to maintain highway safety, but the other highway conditions relate to the implementation of development.

Conclusion

14. I therefore allow the appeal and impose the conditions in the schedule on the following page.

John Longmuir

INSPECTOR

----- Schedule of conditions-----

- 1) Other than those shown on the approved plans no new windows shall be formed in the side elevations of the proposed development for House 1 and 2.
- 2) The windows formed in the side elevation of House 1 with the exception of Bedroom 3 shall not be reglazed other than with obscure glass.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any order revoking or re-enacting that order, no wall, fence, gate or other means of enclosure shall be erected, constructed or placed in front of the dwellings without the prior written permission of the Local Planning Authority.
- 4) No more than one access for vehicles shall be made or maintained to the site from Rugby Road, Coventry.