
Appeal Decisions

Site visit made on 23 November 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th November 2020

Appeal A: APP/P3040/W/20/3256153

15 Skylark Close, Bingham NG13 8QH

- 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 Mr Mark Watchorn against the decision of Rushcliffe Borough Council.
 - The application Ref 19/02537/FUL, dated 23 October 2019, was refused by notice dated 21 January 2020.
 - The development proposed is a new two storey dwelling.
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Appeal B: APP/P3040/W/20/3256154

15 Skylark Close, Bingham NG13 8QH

- 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 Mr Mark Watchorn against the decision of Rushcliffe Borough Council.
 - The application Ref 20/00356/FUL, dated 12 February 2020, was refused by notice dated 1 April 2020.
 - The development proposed is a new two storey dwelling (resubmission of application ref 19/02537/FUL).
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Decisions

Appeal A - APP/P3040/W/20/3256153

1. The appeal is dismissed.

Appeal B - APP/P3040/W/20/3256154

2. The appeal is allowed and planning permission is granted for a new two storey dwelling (resubmission of application ref 19/02537/FUL) at 15 Skylark Close, Bingham NG13 8QH, in accordance with the terms of the application Ref 20/00356/FUL, dated 12 February 2020, subject to the conditions set out in the attached schedule.

Background and Main Issues

3. Appeals A and B relate to two similar planning applications for the erection of one attached two bedroom dwelling on the same site. The Appeal B proposed development differs from the Appeal A development in respect of (i) the removal of a single storey rear extension and hence the provision of a larger garden area for the proposed dwelling and a realignment of the proposed rear fence between No 15 Skylark Close and the rear garden of the appeal property;

- (ii) the inclusion of a render finish to the first floor gable elevation; (iii) an altered car parking arrangement, and (iv) additional landscaping on the northern boundary where it meets the highway.
4. In the context of the above, and taking into account the respective Council refusal notices, the main issues for both appeals are (i) the effect of the developments on the character and appearance of the area; (ii) the effect of the developments on the living conditions of the occupiers of neighbouring properties in respect of the movement, turning and parking of vehicles; and (iii) whether in respect of appeal A there would be adequate outside amenity space for both the occupiers of the proposed dwelling and No 15 Skylark Close and whether in respect of Appeal B there would be adequate outside amenity space for the occupiers of No 15 Skylark Close.

Reasons

Character and appearance

5. The appeal site comprises land to the side and associated with No 15 Skylark Close which is an end of terrace dwelling positioned within a relatively large and modern housing estate. The area comprises a mix of detached, semi-detached and terraced dwellings all of which are mainly built in brick and with some including small elements of render to the front elevations. There is a general consistency in terms of style and materials across the different house types and most of the properties are set within reasonably sized plots. Whilst many of the houses are set back from the various roads, there are quite a number (about 16 within the estate) which have the gable elevations very close to the highway.
6. I agree with the main parties that in terms of appearance, the appeal dwellings would assimilate well into the street-scene. Indeed, they would be identical in terms of their scale and front appearance when considered against the other properties within the terrace.
7. In respect of both appeals, the two storey dwelling would have its gable elevation in close proximity to the highway. Whilst I do not doubt that the land to the side of No 15 Skylark Close may have previously been more open, and perhaps included more landscaping, the existing situation is such that the land is now enclosed by a long approximately 1 metre high fence which in itself is not suitably reflective of the prevailing design and layout of the rest of the estate. The evidence does not suggest that the existing 1 metre high fence on the site is unlawful and hence it is necessary that I reach a decision based on existing site conditions.
8. In this case, I consider that the erection of a dwelling that is close to the highway edge would not look materially out of place. A similar arrangement exists opposite the appeal site (i.e. No 8 Skylark Close) and there are a number of similar arrangements elsewhere on the estate. I acknowledge that the proposal would result in a building on the site which is currently devoid of built form. However, the site's overall contribution in terms of offering a green and open relief from the otherwise built up area is not currently significant. Furthermore, the proposals represent an opportunity to remove the uncharacteristic and long fence which encloses the appeal site.

9. I do recognise that the proposal would change the appearance of the street. The area is relatively built up and so I consider that it is imperative, in the interests of good design, that steps are taken to visually soften new built form particularly in prominent locations such as the appeal site. In this area, I consider that with the inclusion of high grade boundary landscaping it would be possible to ensure that the proposed development does not appear visually harsh when viewed from Skylark Close. In this respect, I find that the landscaping shown for Appeal A would be deficient, but the combined grassed area and increased landscaping for Appeal B would be adequate subject to the imposition of a planning condition.
10. In respect of Appeal B, the appellant has included a rendered finish to the first floor part of the gable elevation and brick to the lower section of the elevation. In contrast, the Appeal A dwelling would be built in brick. The appellant claims that the part rendered proposal is an attempt to soften the impact of the development. However, I am not persuaded that the inclusion of render on this elevation would provide a softening impact, and, in any event, the Appeal B development would include improved landscaping which would have a softening impact. The gable elevations of the properties within the vicinity of the appeal site are all fully brick and so the inclusion of a rendered finish would have the effect of making the Appeal B dwelling look materially out of place in the street-scene. In this context, I find that Appeal B would be acceptable subject to the inclusion of a condition requiring this elevation to be faced only in matching brick.
11. I acknowledge comments made about the proposed bin storage area which would be to the front of the dwelling and to the side of the frontage car parking spaces. Subject to all of the bins being stored in a suitably designed enclosure, by means of the inclusion of a planning condition, I am satisfied that this part of the proposal would be acceptable in design terms.
12. For the reasons outlined above, I conclude that Appeal A would have an unacceptably adverse impact on the character and appearance of the area and would therefore conflict with the design and sustainability requirements of Policy 10 of the Rushcliffe Local Plan Part 1: Core Strategy 2014 (CS); Policy 11 of the Local plan Part 2: Land and Planning Policies 2019 (LP) and Chapter 12 of the National Planning Policy Framework (the Framework). However, and subject to the imposition of conditions, Appeal B would not have a significantly adverse impact of the character and appearance of the area and hence would accord with the design and sustainability requirements of the aforementioned policies and the Framework.

Car parking and turning areas

13. On the evidence that is before me, the appeal site is located in an accessible location within reasonable walking and cycling distance of a good range of facilities and amenities and close to a bus stop which has good bus services. In this context, I am satisfied that the car parking provision for both appeals, i.e. one space for No 15 Skylark Close and then either two spaces for the appeal property or one space for the appeal property and a shared third visitor space, would suitably accord with the Nottinghamshire Highway Design Guide car parking standards. Furthermore, it is of note that the entrance to the cul-de-sac would be widened in respect of both appeals, thereby ensuring that

adequate space would be provided for vehicular access for all properties and the turning of vehicles into and out of the resultant car parking spaces.

14. Whilst the Council assert that the proposal would lead to more on-street car parking and "*knock on effects*", the proposal accords with the above car parking standards and there is no reasonable evidence before me that the proposals would lead to any significant problems from a living conditions point of view, or that unacceptable harm would be caused to matters of highway safety. In respect of the latter, I note that the Highway Authority has raised no objection to the proposals.
15. Subject to the imposition of conditions, I therefore conclude that neither the appeal A nor the appeal B development would cause harm to the living conditions of the occupiers of neighbouring properties in respect of on-street car parking issues or in respect of the manoeuvring of vehicles. Therefore, the proposals would accord with the amenity and sustainability aims of Policy 1 of the CS and Policy 11 of the LP.

Outside amenity space

16. In respect of Appeal A, the proposed rear garden space for the proposed dwelling would measure about 5.4 m wide by 7.1 m in length (38.3 sqm). The Rushcliffe Residential Design Guide Supplementary planning Document 2019 (SPD) states that "*it has been accepted under previously established guidelines that there should be rear gardens with a depth of 10m to the boundary and garden sizes of 110sq m for detached properties, 90sq m for semi-detached and terraced properties and 55sq m for 1 and 2 bed properties*". I do not know what the previously established guidelines were, but nonetheless these size thresholds exist in the adopted SPD and hence they are material to the determination of this appeal. The SPD does, however, allow for some flexibility in terms of permitting smaller gardens than the above size thresholds and I deal with that matter below.
17. Whilst I acknowledge that there is good access to open countryside between Avocet Close and Nightingale Way, about 4 minutes' walk from the site and as seen on my site visit, the Appeal A new dwelling garden would, overall, be quite small and hence would provide a relatively cramped outside amenity space which would be of limited private benefit for sitting out, drying clothes and exercise purposes. In addition, and owing to the fact that there is already a single storey rear extension in place to No 15 Skylark Close, the resultant outside amenity space for the occupiers of such a property would also be cramped. In this regard, I conclude that the Appeal A outside amenity space for both the proposed dwelling and No 15 Skylark Close would be deficient and would fail to accord with the requirements of the SPD.
18. In contrast, the Appeal B proposal does not include a single storey rear extension and hence the proposed garden for the appeal dwelling would be proportionate and of an adequate size. It would be 10 metres in length and would measure just over 50sqm which would be acceptable given the position and orientation of the garden and the close proximity of the countryside.
19. The outside amenity space for No 15 Skylark Close would be larger than that shown for Appeal A as a result of an angled fence line. Therefore, whilst it would not meet the overall size thresholds in the SPD, given the position of the existing conservatory, this would to an extent be compensated for as a result

of an improvement in the width of the amenity space. This would be on the margins of acceptability in terms of permitting a smaller garden as advocated in the SPD, but given the close proximity of the countryside where occupiers would be able to also get fresh air and take exercise, I am satisfied that the proposal just about accords with the SPD in terms of the resultant outside garden spaces for the Appeal B development.

20. In reaching the above view about the Appeal B development, I consider that it would be necessary to impose a condition which removes permitted development rights in respect of erecting extensions and outbuildings in both rear gardens. That would then ensure that reasonable outside private amenity space exists for the occupiers of both dwellings.
21. I therefore conclude that in respect of Appeal A, the outside amenity space for No 15 Skylark Close and the appeal building would be deficient. Therefore, this proposal would not suitably accord with the amenity requirements of Policy 10 of the CS and the SPD. In respect of Appeal B, I conclude that subject to the imposition of a condition relating to permitted development rights being removed, the outside amenity spaces for No 15 Skylark Close and the appeal building would be adequate for occupiers of such dwellings. Therefore, this proposal would accord with the aforementioned policies.

Other Matters

22. I have taken into account representations made by other interested parties. Some of the comments made have already been addressed in my reasoning above. Reference has been made to a restrictive covenant which prohibits the erection of additional structures. This is a private and legal matter and the grant of planning permission would not override any covenants relating to the site.
23. Comments have made about whether the appellant owns all of the land to which the appeal relates. I have not been provided with detailed evidence to refute the appellant's claim that they do have ownership/control of the land to which the appeal relates. In the event that this was found not to be the case, then of course the appellant would be precluded from implementing the planning permission. There is not any reasonable evidence before me to suggest that the appellant has not completed the correct ownership certificates at planning application stage.
24. I acknowledge comments about maintaining boundary landscaping, including that at the entrance to the cul-de-sac. I am not aware that there are any existing problems in terms of such maintenance and there is nothing before me to indicate that such land would not be maintained by the relevant owner(s). Similarly, there is no clear evidence before me to indicate that the proposal would be incapable of being acceptable in terms of its effect on surface water or foul drainage.
25. In view of the comments and evidence from the occupier of No 3 Skylark Close and the differences in land levels between the site and neighbouring land, I have imposed a condition in respect of the provision and approval of surface water drainage details. I do not, however, consider that the removal of existing vegetation would, in relative terms, have a materially adverse effect on privacy or security for the occupiers of any of the neighbouring dwellings.

26. I have considered the relationship of the proposed dwelling with all neighbouring properties. Owing to the position, orientation and window positions of the Appeal B dwelling, I do not consider that the proposal would have a significantly adverse effect on the occupiers of any neighbouring properties in respect of privacy, light or outlook. I acknowledge that the dwelling would be visible from some dwellings, particularly those immediately surrounding it, but the Courts have held that the loss of a view is not a material planning consideration.
27. None of the other matters raised alter or outweigh my conclusion that the Appeal B development would be acceptable in planning terms subject to the inclusion of a number of planning conditions.

Conditions

28. Planning permission is granted subject to the standard three year time limit condition. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
29. In the interests of good design, it is necessary to impose a materials condition relating to the approved dwelling and the boundary wall/fence. In addition, in order to suitably screen and soften the bin storage area for the two dwellings, a condition is necessary relating the submission, approval and retention of a bin enclosure.
30. In the interests of highway safety, and to ensure the acceptable manoeuvring of vehicles within the cul-de-sac, it is necessary to impose a condition requiring the widened access to be in place prior to first occupation of the approved dwelling. In the interests of highway safety, and in order to minimise the potential for localised surface water flooding from the site, it is necessary to impose conditions relating to the approval and provision of surface water drainage details.
31. In this case, there is clear justification for removing specified permitted development rights from both the appeal dwelling and No 15 Skylark Close. This would ensure that sufficient outside amenity space was available for the occupiers of both properties and is necessary to protect the living conditions of the occupiers of neighbouring dwellings and to maintain a consistent design approach within the cul-de-sac.
32. Finally, and in the interests of good design, it is necessary to impose a landscaping condition thereby ensuring suitable landscaping around the property and on the land between the approved wall/fence and Skylark Close.

Conclusions

Appeal A - APP/P3040/W/20/3256153

33. I conclude that the appeal should be dismissed.

Appeal B - APP/P3040/W/20/3256154

34. I conclude that the appeal should be allowed.

D Hartley

INSPECTOR

Appeal B - APP/P3040/W/20/3256154

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 449.01A and Drawing No 449.10B.
3. Notwithstanding the approved plans which show a part rendered, park brick side elevation to the approved dwelling, this elevation shall be faced entirely in brick. The materials used for the approved dwelling shall match the materials of No 15 Skylark Close. The brick to the approved boundary wall/fence fronting Skylark Close shall match the brick used for the approved dwelling.
4. Notwithstanding the provisions of Schedule 2, Part 1 Classes A - E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) there shall be no enlargement or alteration of the proposed dwellings, and no alteration to or insertion of windows or rooflights other than those shown on the approved plans without the prior written approval of the local planning authority.
5. Prior to the commencement of development details of the external materials for the hard landscaping, widened access, parking areas and the associated means of drainage for surface water run-off, shall be submitted to and approved in writing by the local planning authority. Prior to the occupation of the dwelling, the approved access, parking, hard landscaping and surface water drainage scheme shall be provided. The approved details shall thereafter be retained as approved in perpetuity.
6. Prior to the construction of the new dwelling beyond damp proof course level, details of a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. 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 building 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.
7. The shared access driveway shall be surfaced in a hard bound material for a minimum distance of 5 metres behind the highway boundary and shall be drained to prevent the discharge of surface water from the driveway to the public highway. The bound material and the provision to prevent the discharge of surface water to the public highway shall be retained for the lifetime of the development.
8. Prior to the construction of the new dwelling beyond damp proof course level, details of all the screen fencing/walling and means of enclosure to be

erected within the site shall be submitted to and approved in writing by the local planning authority. The dwelling shall not be occupied until the approved screen fencing/walling and means of enclosure have been completed. The approved screen fencing/walling and means of enclosure shall thereafter be retained and maintained.

- 9 Prior to the occupation of the approved dwelling, details of an enclosed bin store shall be submitted to and approved in writing by the local planning authority. The approved bin store shall be provided prior to first occupation of the approved dwelling and shall thereafter be retained. Bins shall be stored only in the approved bin store.