



Appeal Decision

Site visit made on 5 January 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th January 2021

Appeal Ref: APP/X3025/W/20/3260221

The Gables, Welwyn Avenue, Mansfield Woodhouse, Notts NG19 9DR

- 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 Michael Callaghan against the decision of Mansfield District Council.
 - The application Ref: 2020/0225/VCON, dated 5 May 2020, was refused by notice dated 28 August 2020.
 - The application sought planning permission for a detached garage without complying with a condition attached to planning permission Ref: 2018/0583/HHA, dated 23 October 2018.
 - The condition in dispute is No 2 which states that: *This permission shall be read in accordance with the Approved Plans listed below. The development shall thereafter be undertaken in accordance with these plans unless otherwise agreed in writing by the Local Planning Authority.*
 - The reason given for the condition is: *To define the permission, for the avoidance of doubt.*
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Decision

1. The appeal is allowed and planning permission is granted for a detached garage at The Gables, Welwyn Avenue, Mansfield Woodhouse, Notts NG19 9DR in accordance with the application Ref: 2020/0225/VCON dated 5 May 2020, without compliance with condition number 2 previously imposed on planning permission Ref: 2018/0583/HHA dated 23 October 2018 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan 1:1250 scale, Proposed Garage Roof Amendment Scale 1:100 Plan 1 May 2020.
 - 2) The external surfaces of the development hereby permitted shall be constructed in accordance with the materials and detailing as approved under Council ref: 2018/0583/HHA, as amended by Council ref: 2019/0659/NMA.
 - 3) The garage/car port hereby approved shall be used for domestic purposes only and shall not be used for any commercial purpose whatsoever.

Procedural Matters

2. The Mansfield District Local Plan 2013-2033 (Local Plan) was adopted by the Council on 8 September 2020. The Local Plan replaces all the remaining saved policies of the 1998 Mansfield District Local Plan, including those that were contained in the Council's reasons for refusal. The main parties were given the opportunity to comment on this matter and I have taken the comments that were received into account. Accordingly, I have considered the appeal on this basis.
3. It was apparent from my site visit that the development has commenced, although the works are not yet complete. The walls and the roof structure have been formed, but the roof is not finished. The Council made its decision on the basis of the submitted plans that show the completed garage and, hence, so have I. In the event that what has been built on the site does not entirely reflect the submitted plans is a matter for the main parties.

Background and Main Issues

4. The appeal concerns a detached open fronted garage building, which lies adjacent to a turning head at the end of Welwyn Avenue. The associated dwelling is found in spacious grounds and the garage is located some distance from it.
5. Planning permission¹ was originally granted for the garage in 2018. This was subject to condition 2 that related to the approved plans. The appellant subsequently sought to vary that condition to alter the design of the approved garage by way of an increased height and a gable ended roof. This was refused by the Council for reasons related to the effect on the living conditions of the occupiers of a neighbouring property, 6 Welwyn Avenue (No 6), and on character and appearance grounds².
6. The appellant now proposes an alternative design that would have a hipped roof, whilst still increasing the height. The Council remain concerned with regard to the effect on the living conditions of the occupiers of No 6 due to the sense of enclosure and the overbearing qualities, and that harm to the appearance and character of this part of Welwyn Avenue would arise.
7. On the basis of the above, the main issues are the effect of the proposal on (i) the living conditions of the occupiers of No 6 by way of visual impact and outlook; (ii) the character and appearance of the area; and (iii) if harm arises, whether this is outweighed by the fallback position of the approved scheme for the garage.

Reasons

Living Conditions

8. No 6 is a detached bungalow property which lies close to the part of the appeal site where the garage is located. No 6 has been extended by way of a conservatory on the side facing the turning head and the garage, and has clear glazed windows also orientated in this direction. Part of its paved garden, or open amenity space, extends across the moderate distance up to the common

¹ Council ref: 2018/0583/HHA

² Council ref: 2020/0145/VCON

boundary with the site. This boundary is defined by a wall and a high conifer hedge.

9. The side wall of the garage is set close to the boundary with No 6, even where it slightly angles away behind the conifer hedge. It also closely extends along much of the length of this boundary, even if the relationship is not quite parallel. With the expanse of the roof, the mass of the garage when complete would result in a clear sense of enclosure along the boundary.
10. With the proximity of the garage to the garden along much of the length of the boundary, the perceived overbearing effect that would result would diminish from the living conditions of the occupiers of No 6, as regards the garden area. Furthermore, the conservatory windows and those on the side of No 6 would be similarly adversely affected as regards their outlook. With the fairly short distances between the facing clear glazed windows and the garage, the visual impact would be clearly apparent. The garage would lessen from the enjoyment of the use of the rooms on this side of the bungalow.
11. I conclude that the proposal would have a significant and harmful effect on the living conditions of the occupiers of No 6 by way of visual impact and outlook. As such, it would not comply in this regard with Policies 6 and 7 of the Local Plan which are concerned with proposals not significantly reducing the residential amenity of nearby existing occupiers, avoiding and minimising impacts on the amenity of existing users and that proposals will be expected to not have a significant adverse effect on the living conditions of existing residents including through an overbearing impact, amongst other considerations.

Character and Appearance

12. The garage is found at the end of this part of Welwyn Avenue. In its immediate vicinity are bungalow type properties. The garage is seen within this context, rather than with the host property, because of the separation distance involved.
13. The garage is set back from the streetscene by the turning head. It is also positioned back from the street facing elevation of the neighbouring property at No 6. As a result, the siting is relatively discrete. It also presents an open structure towards the road, that reduces its otherwise solid appearance. When complete, the depth of the roof would not be readily visible as it would be on the opposite side from its street frontage. It would not be unduly prominent in the streetscene because of the siting.
14. The garage would also maintain a single storey appearance and so it would not be out of place with its bungalow neighbours. Nor would it compete with No 6 as the garage would be seen as a distinct building with spacing provided by No 6's garden, despite that the garage would be higher than this bungalow property. The roof hipping back from the boundary would also assist in this regard. This would also further lessen its visual impact on the appearance and character of this part of Welwyn Avenue. As a result, it would not appear at odds in these surroundings.
15. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. Therefore, it would comply in this regard with Policies P1, P2 and P6 of the Local Plan where they are concerned

with well-designed buildings, a strong sense of place, development that is appropriate to its context, and that no significant adverse impact on the character and appearance of the street scene or the wider surrounding area would result, amidst other matters.

The Fallback Position

16. The approved scheme for the garage on the site represents a clear fallback position. As not insignificant elements of the approved garage have already been constructed on site, there is a real prospect of it being implemented. The principle difference between the fallback position and the appeal proposal is the increased height of the roof by 0.75 metres and the resultant increase in massing. This also causes further massing by an increased depth of roof and on the side elevation walls.
17. In comparing the fallback position with the appeal proposal, the increase in height of the roof and the associated massing would be notably set back from the boundary with No 6 because of the proposed hipped roof arrangement. The effect on the outlook and visual impact from No 6 would, in all likelihood, be similar between the fallback position and the proposal.
18. The increased depth of the roof and on the side elevation wall would be largely behind the high conifer hedge and so, again, the effect on the outlook and visual impact from No 6 would also be similar. I also have no substantive evidence that the hedge would be removed, and so I have considered the effect on this basis.
19. The Council's submissions point to that the approval for the fallback position was an on-balance decision and so the incremental increase takes the proposal beyond the boundaries of acceptable harm. I disagree with this position on the basis that the differences are not to the extent that the level of harm itself would increase, as the effects would be similar.
20. The fallback position, therefore, attracts significant weight in my decision. In having regard to the site specific circumstances and the similar level of effect on the living conditions of No 6 between the fallback position and the appeal proposal, it leads me to a conclusion that the proposal is justified.

Other Matters

21. The appeal site also forms a common boundary with residential properties on Marples Avenue. The associated dwellings are well set back from this boundary. The proposal would be positioned at a higher land level beyond the end of their rear gardens and the high conifer hedge also extends alongside this boundary. The hipped roof would also angle further back from the boundary. The effect on the living conditions of the occupiers of these properties would, thus, not be unacceptable with regard to visual impact and outlook. Whilst I am not unsympathetic in relation to the effect on the boundary treatment, this is a matter for the respective parties and not for my consideration.

Conditions

22. I have imposed a condition concerning the approved plans. This is in the interests of certainty. The remaining conditions from the approved scheme are re-imposed where I consider they remain necessary and relevant, reflecting in

the interests of accuracy that works have commenced, and without changing their overall intention. The conditions also reflect that the Council has approved a non-material amendment as regards the external materials³.

Conclusion

23. The proposal would not have an unacceptable effect on the character and appearance of the area. As regards the effect on the living conditions of the occupiers of No 6, the fallback position justifies the proposal. This is a material consideration that supports a decision for a proposal that is not in accordance with the development plan. I have considered all matters that have been raised but none satisfactorily demonstrate that condition 2 is reasonable and necessary. Accordingly, I conclude that the appeal should be allowed and condition 2 should be removed, subject to the imposition of the new condition.

Darren Hendley

INSPECTOR

³ Council ref: 2019/0659/NMA