



Appeal Decision

Site visit made on 27 April 2021

by M Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2021

Appeal Ref: APP/K1935/W/20/3262084

8A Magellan Close, Stevenage SG2 0NF

- 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 Raymond Brownson (Hamburg Estates Ltd) against the decision of Stevenage Borough Council.
 - The application Ref 20/00384/FP, dated 13 July 2020, was refused by notice dated 14 October 2020.
 - The application sought planning permission for the erection of 2 no. two storey three bedroom dwellings without complying with a condition attached to planning permission Ref 16/00791/FP, dated 10 February 2017.
 - The condition in dispute is No 11 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revising, revoking and re-enacting that Order with or without modification), no windows, doors or other openings associated with the dwellinghouses other than those expressly authorised by this permission shall be constructed.
 - The reason given for the condition is: To satisfactorily protect the residential amenities of nearby occupiers at numbers 8, 9 and 10 Magellan Close and numbers 52 to 58 Ferrier Road.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 no. two storey three bedroom dwellings at 8A Magellan Close, Stevenage SG2 0NF in accordance with the application Ref 20/00384/FP dated 13 July 2020, without compliance with the conditions previously imposed on planning permission Ref 16/00791/FP dated 10 February 2017 but subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Raymond Brownson (Hamburg Estates Ltd) against Stevenage Borough Council. This application is the subject of a separate decision.

Background and Procedural Matters

3. The appeal site includes a pair of semi-detached properties that are accessed from a turning head serving Magellan Close. Construction of the dwellings within the site had nearly been completed when I visited. Planning permission was granted for the development under reference 16/00791/FP. The permission is subject to condition No 11 which prevents the insertion of

additional openings beyond those approved. The reason for the condition is to protect the residential amenity of the occupiers of neighbouring properties.

4. The application subject to this appeal sought to vary condition No 11. However, the appellant has not put forward evidence which indicates that the condition is unnecessary and thus I have no reason to find otherwise. Instead, the appellant wishes to insert a window into one of the dwellings and a rooflight into the other, in accordance with a drawing submitted with the application¹. This is clear from the application form.
5. Section 73(2)(a) of the Town and Country Planning Act 1990 (the Act) enables the decision maker to consider granting permission 'subject to conditions differing from those subject to which the previous planning permission was granted'. Having regard to this and the appellant's aims, I have determined the appeal on the basis that permission is sought for the approval of the openings shown on the drawing submitted with the application and not the removal of condition No 11.
6. The application was described as 'variation of condition 11 (no new windows and doors) attached to planning permission 16/00791/FP to allow insertion of a rooflight and gable window to be added to the dwellings'. The proposed insertion of the openings was clear from that description and the submitted drawing. The Council and interested parties have had opportunities to comment on those openings during the application and appeal processes. No parties are therefore prejudiced in my approach to determining the appeal.
7. The openings would serve spaces at loft level, which are proposed to be used for purposes such as home-working, hobbies, play and storage. However, the Council is concerned that the openings would enable the loft spaces to be used as bedrooms. The Council puts forward that the resultant increase from 3 to 4 bedrooms in each property would necessitate further parking provision within the site. In the absence of any additional provision, it is argued that the development would result in an increase in on-street parking that would be prejudicial to highway safety and the free flow of traffic.
8. Case law² has held that an application under Section 73 of the Act may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the permission. Consequently, it is beyond the scope of Section 73 to amend a condition that would result in conflict between it and the description of the development. Notwithstanding the Council's concerns, four bedrooms are not proposed and as such the proposal does not result in conflict with the description of the development in the heading above or the decision.

Main Issue

9. The main issue is the effect of the proposal on highway safety and the free flow of traffic.

Reasons

10. Policy IT5 of the Stevenage Borough Local Plan (LP) states that permission will be granted where proposals comply with the requirements of the Parking

¹ Drawing reference: Sheet 01 Version 1: 6 Jul 2020

² *Finney v Welsh Ministers, Carmarthenshire County Council and Energiekontor (UK) Limited* [2019] EWCA Civ 1868

Provision Supplementary Planning Document. The Parking Provision and Sustainable Transport SPD (the Parking Standards) sets out that dwellings with 3 bedrooms require 1.5 parking spaces, whereas dwellings with 4 or more bedrooms require 2.5 spaces. It states that provision below the standards should be justified. It also explains that reductions may be permitted where the location or characteristics of the development would reduce car ownership levels and that under provision will not be permitted where it is likely to increase on-street parking problems. The Council sets out in its officer's report that at least one additional parking space would be required.

11. The openings would provide natural light that would enable the loft spaces to be used as habitable rooms. The appellant has demonstrated that the spaces would fall short of the minimum standards required for bedrooms as set out by the Space Standards³, which have been adopted by the Council. However, I saw from my visit that the spaces are sufficiently large to accommodate a bed and other typical bedroom furniture. Although some occupiers of the properties may be disincentivised from using the spaces as bedrooms due to limited headroom, it would be possible for the spaces to be used for such purposes.
12. The appellant has highlighted that the Council's case relies on a series of assumptions. I note that even if the loft spaces are used as bedrooms, there can be no certainty that this would necessarily result in more than 2 vehicles being used by the occupiers of each property, but there is nonetheless some likelihood that demand for on-street parking would increase. However, the appellant also contends that the site is in a quiet suburban area and additional vehicles would not prejudice the free flow of traffic or highway safety.
13. I saw that many of the properties in the area feature driveways and there are also parking bays adjacent to the carriageway. Whilst only a snapshot, on-street parking was infrequent and opportunities for parking were readily apparent. The curved alignment of the cul-de-sac and Christie Road necessitates low vehicle speeds and the presence of on-street parking and the consequent narrowing of the usable highway acts as a traffic calming measure. In this context, the parking of a small number of additional vehicles on-street would have a minimal impact on highway safety. Furthermore, there would continue to be passing places along the carriageway and I saw that it was sufficiently wide for larger vehicles to pass vehicles parked on-street. As such, there would be little impact on the flow of traffic in the area from a small number of additional vehicles being generated by the development.
14. Moreover, there is little in the way of firm and substantive evidence which demonstrates that there are currently highway safety or traffic flow issues in the area or which indicates that additional vehicles generated from the development would have significantly harmful impacts. An underprovision of parking is therefore justified in the circumstances of this case.
15. A similar proposal for the insertion of rooflights was dismissed at appeal in June 2020⁴. I have not been provided with full details of that proposal or the arguments put forward by the parties at that time, but I have been furnished with and carefully considered the drawings and the decision letter. Whilst I have given the previous appeal decision great weight, based on the evidence before me, including the particular arguments put forward by the parties in this

³ Technical housing standards – nationally described space standard, March 2015

⁴ Appeal reference: APP/K1935/W/20/3244644

case, my observations of the area and the above reasons, I am satisfied that the proposal would not prejudice highway safety or the free flow of traffic.

16. The proposal accords with LP Policy IT5 and the Parking Standards having regard to its flexibility to permit lower parking levels where justified. The proposal also accords with the National Planning Policy Framework (the Framework), which sets out that development should only be prevented on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
17. The Council contends that the proposal conflicts with the Planning Practice Guidance (PPG); however, I have not been referred to any specific areas of conflict with it. I thus have no reason to find that the proposal offends the PPG.

Other Matters

18. Interested parties suggest that it has always been the appellant's intention to create 3 storey dwellings. However, I do not have any firm and substantive evidence indicating that this is the case. Whilst limited information has been provided regarding any breaches of planning control at the site to date, this has no bearing on the merits of the appeal proposal in any event.
19. It is also argued that the openings would have adverse impacts on the living conditions of the occupiers of neighbouring properties. However, the Council has no concerns in this regard and, taking into account the positions of the openings and the distances between properties, there are no compelling reasons to reach different findings to the Council.
20. Concerns are also raised regarding fire safety. However, the Council has not raised any issues in this respect and I have no reason to find issue with the proposal regarding this matter.

Conditions

21. The PPG makes clear that decision notices for the grant of permission under Section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Whilst the officer's report suggests that details may have been approved for some of the conditions imposed originally, I cannot be sure as to the status of the conditions based on the parties' submissions. Accordingly, I shall impose those conditions that I consider remain relevant, with editing to ensure compliance with the tests for conditions set out at paragraph 55 of the Framework. If some of the conditions have in fact been discharged, that is a matter which can be addressed by the parties.
22. Construction of the development is underway and thus a time condition is unnecessary. However, an approved plans condition is needed in the interests of certainty. The drawing showing the proposed openings does not include all the approved elevations. Moreover, it appears to show slightly different details to the approved drawings, such as an altered porch canopy, which are beyond the scope of the proposal. As such it is necessary to impose a condition to enable the development to be carried out in accordance with the submitted drawing but only insofar as this provides for the openings to be constructed.
23. A condition to require the parking spaces to be provided and retained is necessary to ensure there is sufficient off-street parking provision. Conditions to require the approval of details of boundary treatments, details of

landscaping, the replacement of any damaged or diseased planting, and details of the materials to be used in the construction of the dwellings are needed to ensure that the development has an acceptable appearance. A condition as to the timing of the removal of vegetation is required to protect any nesting birds. A condition to require details of works to trees are necessary to protect the living conditions of the future occupiers of the development.

24. Conditions to prevent the insertion of dormer windows and other openings by means of permitted development rights are necessary to protect the living conditions of the occupiers of Nos 52 to 58 Ferrier Road and Nos 8 to 10 Magellan Close. A condition to restrict the construction times for the development is also required to protect the living conditions of the occupiers of nearby properties.

Conclusion

25. For the above reasons, the appeal is allowed.

Mark Philpott

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: MAG P 001B; MAG P 002B; MAG P 003B; MAG P 004A; MAG P 005A; MAG P006A; MAG P 007A.
- 2) Notwithstanding the approved plans specified in Condition No 1, the development hereby permitted shall be carried out in accordance with drawing Ref Sheet 01 Version 1: 6 Jul 2020 but only in respect of the rooflight in the front roof plane of the building and the casement window in the eastern elevation of the building.
- 3) No development shall take place until a schedule and samples of the materials to be used in the construction of the external surfaces of the dwellinghouses hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) Prior to the first occupation of the dwellinghouses hereby permitted the approved car parking area shall be marked out, surfaced and constructed in accordance with the details identified on drawing Ref MAG P 002B and shall be permanently retained in that form thereafter.
- 5) No construction work relating to this permission shall be carried out on any Sunday, Public or Bank Holiday nor at any other time except between the hours of 0730 and 1800 on Mondays to Fridays and between the hours of 0900 and 1300 on Saturdays.
- 6) No development shall take place until the details of all boundary treatments, including details of any walls, fences, gates or other means of enclosure have been submitted to and approved in writing by the Local Planning Authority. The approved boundary treatments shall be completed before the use hereby permitted is commenced or before the building is occupied.
- 7) No development shall take place until a scheme of landscaping that includes details of both hard and soft landscape works has been submitted to and approved in writing by the Local Planning Authority. 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 first occupation of the building or the completion of the development, whichever is the sooner. In regard to hardsurfacing, this shall be carried out in accordance within three months of the first occupation of the building or the completion of the development, whichever is the sooner.
- 8) Any trees or plants comprised within the scheme of landscaping, which within a period of five 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 similar in size and species.
- 9) No removal of trees, scrub or hedges shall be carried out on site between 1 March and 31 August inclusive in any year unless searched beforehand by a suitably qualified ornithologist.

- 10) Notwithstanding the provisions of Class B of Part 1, Schedule 2 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) no dormer windows shall be constructed on the dwellinghouses hereby permitted unless permission is granted on an application made to the Local Planning Authority.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, doors or other openings other than those expressly authorised by this permission shall be constructed on the dwellinghouses hereby permitted.
- 12) Prior to the commencement of the development details of the crown reductions to the 2 no. Oak trees which are located adjacent to the site shall be submitted to and approved in writing by the Local Planning Authority. The works to the trees shall be undertaken in accordance with the approved details.