
Appeal Decision

Site visit made on 28 July 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2021

Appeal Ref: APP/P1560/W/20/3260601

Land Adjacent 3 Bentley Road, Weeley Heath CO16 9DT

- 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 PSCS Ltd against Tendring District Council.
 - The application Ref 20/00525/FUL is dated 21 April 2020.
 - The development proposed is erection of a detached 3 bed bungalow with associated car parking.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a detached 3 bed bungalow with associated car parking at land adjacent 3 Bentley Road, Weeley Heath CO16 9DT. The permission is granted in accordance with the terms of the application Ref 20/00525/FUL, dated 21 April 2020, subject to the conditions included in the Schedule at Annex A.

Preliminary Matters

2. The Council refers to policies from the Tendring District Local Plan 2013-2033 and Beyond Publication Draft, and indicates that the Section 1 Local Plan was adopted in January 2021, which is after the appeal was made. However, this contains strategic policies and not those referred to in this case, which are from the Section 2 Plan, which is subject to independent examination. The National Planning Policy Framework (the Framework) indicates that weight may be given to relevant policies in emerging plans depending on a number of factors¹. I accept that the Section 2 Plan is at a relatively advanced stage in its preparation, but it is not fully clear whether there are unresolved objections to any of the policies and, if so, how significant these are. For this reason, I find that only limited weight can be given to these emerging policies for the purposes of this appeal. Consequently, I have relied on the policies referred to from the adopted development plan.
3. I note that the appellant submitted a unilateral undertaking at application stage to address the required mitigation by the Council of the effect of the proposal on protected European sites.

¹ Paragraph 48.

4. A revised version of the Framework was issued in July 2021. The parties were given the opportunity to comment on any implications with regard to the current appeal and I have had regard to the comments made.
5. An application for costs was made by PSCS Ltd against Tendring District Council. This application is the subject of a separate decision.

Main Issues

6. The Council indicates that had it determined the application permission would have been refused for three reasons, relating to the design of the bungalow, in terms of its form and relationship with surrounding development; the effect on the amenity of future occupiers and neighbouring residents; and the position of parking spaces in proximity to the nearby road junction.
7. Accordingly, the main issues are the effect of the proposal on:
 - the character and appearance of the street scene;
 - the living conditions of future occupiers, with regard to outlook, and neighbouring residents, with regard to privacy; and
 - highway safety.

Reasons

Character and Appearance

8. The appeal site is located between two existing properties, No 3 Bentley Road and Folly Farm on Mill Lane, and includes a domestic outbuilding associated with No 3. There are dwellings of individual design and appearance on the same side of Mill Lane to the south-east of the appeal site and along Bentley Road to the north-west, while an agricultural field is directly opposite the site on the other side of Mill Lane.
9. Policy QL9 of the Tendring District Local Plan 2007 (the Local Plan) requires development to protect and enhance local character, including that development should relate well to its site and surroundings. Policy HG14 of the Local Plan requires new dwellings to retain appropriate open space between the dwelling and the side boundaries of the plot, to ensure that new development is appropriate in its setting and does not create a cramped appearance.
10. Mill Lane and Bentley Road near the appeal site include either detached or semi-detached dwellings laid out on broadly consistent building lines. The frontage width of dwellings and plots are variable and the width of the appeal site is not dissimilar to some established plots. The properties to the south-east along Mill Lane are predominantly single storey and so the proposed dwelling would reflect this characteristic of the street scene.
11. Properties retain a varied degree of separation from their boundaries. A number have garages to the rear creating a relatively large gap, while others, such as the pair of dwellings at No 55 are laid out much closer to the boundary. I note in this regard that the proposed dwelling would retain a one metre gap to the boundary either side, which is the minimum distance required by Policy HG14. The policy also says that a greater distance will be expected where circumstances warrant it. However, in this case the proposed dwelling's layout, scale and appearance would not be dissimilar to a number of established

dwellings and so it would not appear incongruous or otherwise uncharacteristic within the street scene.

12. Therefore, for these reasons, I conclude that the proposed dwelling would not have a harmful effect on the character and appearance of the street scene. Consequently, it is not contrary to Policies QL9 and HG14 of the Local Plan, as described above.

Living Conditions

13. The Council's principal concerns reflected in the reason for refusal relate to the lack of outlook for future occupiers from the bedroom windows in the side elevations due to proximity to the side boundaries; and a loss of privacy for occupiers of neighbouring properties.
14. With regard to the first matter, in the Council's statement under the heading 'whether the proposal would provide adequate residential amenity to future occupiers' it states that two of the bedrooms would be positioned with a window on the side elevation and that these windows would look onto a one metre gap from a side boundary. The conclusion reached is that as bedrooms are not normally occupied during the day, this arrangement is considered adequate. I do not disagree with this view and as it apparently contradicts the reason for refusal and there is no other evidence provided to substantiate the reason for refusal, I find that there would be no material harm with regard to this matter.
15. Turning to the second matter, in its statement the Council undertakes an assessment of the effects of development on the neighbouring property, Folly Farm. It concludes that with a condition in place to control installation of dormer windows or rooflights in the new dwelling there would be no loss of privacy to this neighbouring property. I am not aware that the Council raises concerns with regard to loss of privacy from the proposal for any other neighbouring dwelling.
16. Therefore, taking these findings as a whole, I conclude that the proposed dwelling would not have a harmful effect on the living conditions of future occupiers, with regard to outlook or on neighbouring residents, with regard to privacy. As such, it is not contrary to Policies QL10(v) and QL11(ii) of the Local Plan, which concern the effect of development on living conditions of future and existing residents.

Highway Safety

17. There are two existing parking spaces in front of the outbuilding, which would be retained for use in association with the new dwelling. Two replacement spaces would be provided to serve No 3 adjacent to the two existing spaces. This would result in two additional spaces closer to the junction of Bentley Road with Mill Lane. The main question, therefore, is whether the proximity of these new spaces to the junction or the interaction of use of the four spaces would result in material harm to highway safety.
18. The new spaces would be set away from the junction next to the side of No 3 closest to the appeal site. The surrounding area is open with good visibility and the roads at this location have a 30mph speed limit. Moreover, the layout of the proposed and existing spaces would not be materially different from those

of surrounding properties. I note also that the Highway Authority has not raised concerns about the proposed parking arrangements and I see no basis on the available evidence and site inspection to take a different view.

19. Therefore, for these reasons, I conclude that the proposal would not result in material harm to highway safety and, consequently, there is no conflict with Policy TR1a of the Local Plan concerning development affecting highways and Policy QL10(i), which says that all new development should meet functional requirements, including relating to highway safety.

Other Matters

20. I have had regard to the representations made by interested parties both in support of and against the proposal. These raise a number of matters that are addressed under the main issues. In response to other matters, the submitted plans show the site boundary sufficiently clearly and any concerns about notification of neighbouring residents about the proposal is properly a matter for the Council and outside the scope of this appeal. I am unaware that the designation of Mill Lane as a quiet lane is reflected in the Council's planning policy or guidance. The proposal provides the requisite two parking spaces and, therefore, there is no basis to conclude that harmful on-street parking will occur or that the garage is not of sufficient size. Construction work related to a single dwelling will be limited and temporary.
21. The Framework says that plans and decisions should apply a presumption in favour of sustainable development². However, given the above findings in the appellant's favour it is not necessary to consider this matter further.

Conclusion and Conditions

22. I have found in the appellant's favour with regard to all three main issues and, therefore, for the reasons given, the appeal should succeed.
23. Of the Council's suggested conditions I have imposed the standard time condition and, to ensure the proper implementation of development in accordance with the submitted details, one requiring development to be carried out in accordance with the approved plans. The conditions suggested by the Highway Authority concerning implementation of access and parking arrangements, are necessary in the interests of highway safety. I agree also that an electric vehicle charging point should be provided in accordance with the need to promote sustainable development.
24. As found above, it is necessary to control the installation of windows in the new dwelling to ensure the protection of neighbours' privacy. I have had full regard to policy in the Framework, which says in this regard that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so³. In this case, for the reason given, such justification does exist.
25. I note that there is a registered piece of contaminated land on the site, but the appellant questions the need for a precautionary condition to examine this further before development commences. The evidence suggests that the

² Paragraph 11.

³ Paragraph 53.

contamination relates to a well infilled in the nineteenth century and the appellant notes that under Building Regulations a soil report will be undertaken. I agree that in the circumstances this would be a more proportionate and appropriate approach rather than the suggested condition.

26. Finally, I agree that a condition requiring a construction method statement is necessary to ensure the proper implementation of the proposal and to protect neighbouring residents' amenity. In accordance with the Council's suggested approach a statement would need to be submitted and approved before development starts and so a pre-commencement condition is involved and the appellant's agreement to it was sought⁴.
27. The appellant has suggested an alternative approach that would include the relevant details in the condition, without needing these to be submitted and approved. The Framework says that conditions that are required to be discharged before development commences should be avoided, unless there is clear justification⁵ and so, in principle, the appellant's suggested approach is preferable. The relevant details required by the Council are addressed in the suggested approach and follow well-established precedent (such as construction working hours) and overall are reasonable and proportionate with regard to the permitted development, which involves a single dwelling. Accordingly, for these reasons, I have imposed the suggested alternative details as the final condition.

J Bell-Williamson

INSPECTOR

Annexe A

Schedule – 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: site location plan and drawing SBR-01 Revision B.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1, Classes B or C, no dormer, roof light or window shall be installed in the roof of the hereby approved bungalow except in complete accordance with details which shall have been approved, in writing, by the local planning authority following the submission of a planning application for such development.
- 4) Prior to first occupation of the dwelling hereby approved two off street parking spaces shall be provided at the property and two off street parking spaces provided for 3 Bentley Road, as shown on the block plan to approved drawing SBR-01 Revision B, and retained thereafter for vehicle parking.

⁴ In accordance with The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018.

⁵ Paragraph 56.

- 5) Prior to first occupation of the development, the new vehicle accesses shall be provided and retained thereafter with no obstruction above ground level within a 2.4 m wide parallel band visibility splay as measured from and along the nearside edge of the carriageway.
- 6) No unbound material shall be used in the surface treatment of the proposed vehicular accesses within 6m of the highway boundary.
- 7) No gate or other barrier shall be erected at the vehicular accesses.
- 8) An electric vehicle charging point shall be provided for the approved dwelling prior to first occupation.
- 9) The following Construction Method Statement shall be implemented and adhered to throughout the full demolition and construction period for the development hereby permitted:
 - (i) Demolition or construction works shall take place only between 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 Saturdays. Deliveries will be accepted within these working hour periods except for Public/Bank Holidays. No works of any kind shall take place on Sundays or any Public/Bank Holidays. No vehicle connected with the works shall arrive on site before 07:30 or leave after 19:00 (except in the case of emergency).
 - (ii) All loading and unloading of material will take place on the site whenever possible so as not to obstruct traffic.
 - (iii) On-site parking will be available for contractors at all times.
 - (iv) The perimeters of the site will be fenced off with Heras fencing. The fence to the front boundary will be fitted with gates which will be secured when the site is vacated. Appropriate safety notices will be displayed. A secure compound for the storage of materials will be formed on the site and will be used for such storage.
 - (v) Wheel washing facilities will be made available on site and all vehicles will be checked and washed down as necessary before leaving the site to minimise any site debris being transferred onto the Highway. Regular inspection of the adjacent road will be carried out to ensure that no debris is inadvertently spread on to the Highway. Edges of roads and footpaths will be cleaned using hand broom with controlled damping.
 - (vi) The contractors will seek to monitor and control the effects of dust on site during the construction process and to consider the proximity of dust sensitive properties in the vicinity of the works. A water supply will be made available for damping down and fine materials such as sand and cementitious products will be stored under cover or in sealed containers. Covers will be put on to skips that contain dusty material before leaving site. No materials produced as a result of the site development or clearance shall be burned on site.
 - (vii) Noise Control - The selection and use of machinery to operate on site, and working practices to be adopted will, as a minimum requirement, be compliant with the standards laid out in British Standard 5228:2014. Mobile plant to be resident on site during extended works shall be fitted with non-

audible reversing alarms (subject to HSE agreement). Prior to the commencement of any piling works a rationale and details of the techniques to be employed for the piling method shall be chosen, which aim to minimise noise and vibration to nearby residents.

- (viii) All site operatives and sub-contractors shall be made aware of their requirement to assist in the implementation of these requirements and to work to the following best practice measures: General guide to the prevention of pollution; Works in, near or liable to affect watercourses; and Working at demolition and construction sites (Environment Agency).

[End of Schedule]