

Appeal Decision

Site visit made on 3 August 2021

by C J Ford BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2021

Appeal Ref: APP/D1265/W/21/3275012

124 Wyke Road, Weymouth DT4 9QR

- 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 Miss Fiona King and Mr James Perry against the decision of Dorset Council.
 - The application Ref WP/20/00346/FUL, dated 2 June 2020, was refused by notice dated 19 March 2021.
 - The development proposed is replacement of existing bungalow with a detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of existing bungalow with a detached dwelling at 124 Wyke Road, Weymouth, DT4 9QR in accordance with the terms of the application, Ref WP/20/00346/FUL, dated 2 June 2020 and subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Miss Fiona King and Mr James Perry against Dorset Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A revised plan was submitted with the grounds of appeal which would change the internal layout of the proposed first floor accommodation, primarily by moving the first floor bathroom and the smallest bedroom from the rear of the property to the front. The revised plan does not materially alter the nature of the proposed development and interested parties had the opportunity to comment at the appeal stage. I am therefore satisfied that taking into account the amended plan would not prejudice any of the parties in the appeal or their respective case in relation to it.
4. A revised version of the National Planning Policy Framework (the Framework) was published in July 2021 and the main parties were given the opportunity to submit comments. The 2021 version of the Framework is referred to in the decision.

Main Issues

5. The main issues are:

- the effect of the proposed development on the character and appearance of the area; and
- the effect on the living conditions of neighbouring occupiers with particular regard to outlook and privacy.

Reasons

Character and appearance

6. The backland dwellings on the north side of Wyke Road generally have a more subservient form and character than the frontage properties. However, in most cases, these appear to have come forward through the creation of fairly narrow accesses within the existing frontage plots, thereby enabling the land behind to be developed, or they are otherwise tandem developments within the original host plots.
7. The appeal property, a bungalow, stands out as an exception to the typical pattern of backland development in the locality. It has a fairly wide tree lined access from Wyke Road which enables a direct view of the southern elevation. Moreover, the bungalow visually appears to be older than the two-storey houses found on either side of the access. As such, there is the impression that the neighbouring houses were built having regard to the existence of the bungalow and seeking to maintain its frontage presence within the Wyke Road street scene, albeit in a set back position. In these respects, it is clearly distinguishable from other backland properties in the locality.
8. As the two neighbouring frontage properties comprise taller buildings which are also set on higher ground, the appeal bungalow appears uncharacteristically small in scale when viewed from Wyke Road and disproportionate relative to its generous tree lined access. Consequently, its replacement by the proposed larger scale two-storey house with further accommodation in the roof would comfortably integrate with the street scene. The traditional stone fronted Georgian style of the proposed dwelling, in contrast to a contemporary design, would also maintain the important sense of the site being developed before the neighbouring frontage properties.
9. Although the height of the building itself would be greater than the two frontage houses, given the difference in the land levels and the significant separation distances, it would not appear unduly dominant behind them when viewed from Wyke Road. Similarly, although it would stand taller than 122 Wyke Road to the north-east, as the land falls in that direction, there would be a natural stepped appearance to the built form of the backland properties.
10. While the new building would almost occupy the full width of the plot, this would not be unusual having regard to the pattern of development in the locality. Furthermore, the western side would comprise a garage with a workshop above which would be noticeably lower in height than the main part of the house. This element would also adjoin an undeveloped woodland area

outside of the site. As a result, the new building would not appear unduly cramped within its plot.

11. In light of the above, the proposed development would not have an unacceptably harmful effect on the character and appearance of the area. As such, it would not conflict with Policies ENV10, ENV11 and ENV12 of the West Dorset, Weymouth & Portland Local Plan 2015 (LP). Amongst other things, these policies seek to ensure the siting, design, scale, mass and materials of a development complements and respects the character of the surrounding area. They also expect development to contribute positively to the maintenance and enhancement of local identity and distinctiveness. Similarly, it would not conflict with section 12 of the Framework which, amongst other things, seeks to ensure development adds to the overall quality of an area and is sympathetic to local character.

Living conditions

12. The proposed new house would be positioned further to the north than the existing bungalow, away from the rear boundaries of 120 and 126 Wyke Road. Notwithstanding the increased height and bulk of the proposal compared to the bungalow, its set back would be sufficient to ensure that it would not appear unduly overbearing or oppressive to the occupiers of those two neighbouring properties.
13. It would be closer to No 122 which has a lawned area alongside the boundary and ground floor windows to habitable accommodation which face the appeal site. However, they are secondary windows and the lawned area is a side garden. Furthermore, given the difference in the land levels, the existing views from those vantage points are mainly towards the existing higher level boundary treatment between the two properties. Consequently, the effect of the increased height, bulk and closer proximity of the new house would be limited and as such, it would not be unacceptably harmful to the outlook of the occupiers of No 122.
14. The existing bungalow does not impinge on the privacy of the occupiers of the neighbouring properties. Nevertheless, some degree of overlooking can reasonably be expected in such suburban locations, as is currently demonstrated by the views of the front ground floor level of the bungalow from the rear first floor windows of Nos 120 and 126.
15. The proposed three front windows in the roof would be high level sky-lights and the submitted section elevation plan shows that the bottom of the windows would be a minimum of 1.8m above the internal floor level. Consequently, the views towards the rear of Nos 120 and 126 would be very restricted and focussed towards the sky.
16. At the first floor level, the workshop would feature non-opening dummy shutters while the house would have three front windows. In the application plans, these would comprise a centrally positioned landing window flanked by bedroom windows. Views from the eastern bedroom window towards the rear of Nos 120 and 126 would be restricted by a substantial intervening tree which is protected by a Tree Preservation Order (TPO). Views from the landing would only be of a fleeting nature given it would be a shallow space which would function as the access to the roof level accommodation. Although the western bedroom window would largely have uninterrupted views, particularly towards

No 120's rear conservatory, the arising harm would be overcome by the revised plan submitted at the appeal stage, whereby it would become an obscure glazed window serving a bathroom. In the revised plan, the eastern bedroom window would also serve the smallest bedroom in the house, rather than a principal bedroom.

17. In the context described above, the existing comprehensive privacy of the occupiers of Nos 120 and 126 would be impinged by the proposed development. Nevertheless, taking into consideration the separation distance from their property boundaries, and the even greater distances from their habitable accommodation, as well as the nature of the rooms that the first floor front windows would serve and the mitigation of the obscure glazing and the TPO tree, this would not be to an unacceptably harmful degree. As no windows are proposed in the eastern flank of the house and there would be a 1.8m high screen on the east side of the new rear patio, the privacy of the occupiers of No 122 would also be suitably maintained.
18. Accordingly, subject to the scheme being carried out in accordance with the revised plan, the proposed development would not have an unacceptably harmful effect on the living conditions of neighbouring occupiers with particular regard to outlook and privacy. As such, it would not conflict with Policy ENV16 of the LP which seeks to ensure development does not have a significant adverse effect on the amenity of the occupiers of properties through an overbearing impact or loss of privacy. Similarly, it would not conflict with section 12 of the Framework which, amongst other things, promotes good design and a high standard of amenity.

Other Matters

19. In recognition of trees located near to the proposed development which are covered by a Tree Preservation Order (TPO), and in the interests of nature conservation, a condition will be imposed to secure the implementation of the submitted Tree Survey Report and Arboricultural Method Statement. While the report related to an earlier proposed extension, this does not undermine the validity of its recommendations, particularly as the proposed house would be positioned further away from the relevant protected tree than the existing bungalow. Trees which are subject to the same TPO are also found along the access driveway. However, given their set back and in the absence of proposed development that would directly affect them, it would be unnecessary to take a similar approach to the protection of those trees.
20. Representations were made to the effect that the rights of neighbouring occupiers under the Human Rights Act 1998 would be violated if the development were to be allowed. However, the proposed development would not cause unacceptable harm to the living conditions of the neighbouring occupiers and the degree of interference that would be caused would be insufficient to give rise to a violation of the rights under the Act.
21. Concerns have also been raised in terms of highway safety and specifically an increased risk of accidents on Wyke Road. However, I have not seen any evidence that the Wyke Road access is substandard and the appeal scheme is for a replacement dwelling whereby any increase in the number of vehicles using the access would not be significant. Furthermore, the Council's highways advisors have not objected to the proposals and with the above in mind I have no reason to disagree.

Conditions

22. The conditions suggested by the Council have been considered having regard to the tests set out in the Framework and the advice of the Planning Practice Guidance. Where appropriate, those conditions have been amended for clarity and precision. The need for further conditions has also been considered.
23. A condition specifying the approved plans is necessary to ensure certainty. Conditions requiring the submission and approval of details in respect of the proposed and retained boundary treatment, as well as hard and soft landscaping, are necessary in the interests of preserving the character and appearance of the area and safeguarding the privacy of neighbouring occupiers. A condition requiring the submission and approval of details in respect of the external facing materials is also necessary to ensure the development visually harmonises with the area. A condition requiring the parking and turning area to be provided before the dwelling is occupied is necessary to ensure highway safety.
24. A condition requiring the front first floor bathroom window to be obscure glazed and non-opening below a specified height is necessary to protect the living conditions of neighbouring occupiers. Likewise, a condition which requires the submission and approval of details in respect of the proposed screen on the east side of the rear patio is necessary to protect the living conditions of the occupiers of No 122. A condition to prevent demolition and construction work at particularly unsocial times is necessary to protect the living conditions of neighbouring occupiers.
25. A condition removing permitted development rights in relation to Classes AA, B and C of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015, thereby ensuring changes to the roof level are controlled, is reasonable and necessary to protect the living conditions of neighbouring occupiers.
26. However, the removal of permitted development rights in relation to Classes A, D and E of Part 1 to Schedule 2, as suggested by the Council, are not considered to be necessary to protect the living conditions of neighbouring occupiers and having regard to the generous size of the appeal site. Furthermore, given the imposition of conditions on boundary treatment and landscaping noted above, the appellants' suggestion of a separate retention condition in respect of the leylandii hedge in the south east corner of the site would be unnecessary.

Conclusion

27. There are no material considerations that indicate the proposal should be determined other than in accordance with the development plan. The appeal is therefore allowed, subject to the attached schedule of conditions.

C J Ford

INSPECTOR

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: 1458/01 Rev A, 1458/02 Rev A, 1458/03 Rev A, 1458-04 Rev A, 1458/05 Rev A, Nirvana/FS/001-Rev B, Nirvana/RN/001-Rev B, Nirvana/ES/001-Rev B, Nirvana/WS/001-Rev B, Nirvana/SEC/001-Rev B, Nirvana/GF/001-Rev B, Nirvana/FF/001-Rev C and Nirvana/SF/001-Rev B.
- 3) Prior to the first occupation of the development hereby permitted, details indicating the position, design, materials and type of boundary treatment to be erected or retained shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be carried out in accordance with the approved details and completed before the dwelling is first occupied.
- 4) Prior to the first occupation of the development hereby permitted, details of the proposed hard and soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority. Soft landscaping works shall include planting plans and sizes of all trees and shrubs to be retained and removed and details of new planting. All hard and soft landscaping shall be completed in accordance with the approved details before the dwelling is first occupied.
- 5) Prior to development above damp-proof course level, details of all facing and roofing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) The development hereby permitted shall not be first occupied until the parking and turning indicated on the submitted plans has been constructed. Thereafter, these areas shall be maintained, kept free from obstruction and available for the purposes specified.
- 7) Prior to the first occupation of the development hereby permitted, the first floor window in the south elevation serving the bathroom shall be fitted with obscure glazing and no part of that window which is less than 1.7m above the floor of the bathroom shall be capable of being opened. The window shall be retained in that form thereafter.
- 8) Prior to the first occupation of the development hereby permitted, a 1.8m high screen on the east side of the rear patio shall be installed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority. Once installed, the approved screen shall be retained in that form thereafter.
- 9) All works shall be carried out as specified in the submitted Tree Survey Report and Arboricultural Method Statement prepared by Tree Investment and dated May 2017.
- 10) Notwithstanding the provisions of Classes AA, B and C of Part 1 to 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 enlargement,

improvement or other alteration shall take place to the roof of the permitted dwelling.

- 11) Demolition and construction works shall only take place between 08:00 to 18:00 Monday to Saturday and at no time on Sundays or Bank Holidays.

End of Schedule