



Appeal Decision

Site Visit made on 18 October 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2021

Appeal Ref: APP/B1930/W/21/3274511

3 Sovereign Park, St Albans AL4 0FJ

- 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 Karim Tawfik against the decision of St Albans City Council.
 - The application Ref 5/20/2417, dated 16 October 2020, was refused by notice dated 18 March 2021.
 - The application sought planning permission for demolition of existing and erection of 40 houses – reserved matters pursuant to application 5/99/1354 (resubmission following refusal of 5/00/2088) without complying with a condition attached to reserved matters approval Ref 5/01/0684, dated 17 August 2001.
 - The condition in dispute is No 1 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 and any subsequent amendments, no enlargements of the dwelling(s) hereby permitted, or any building or enclosure within the site curtilage shall be built or shall take place without the prior permission of the District Planning Authority or Secretary of State.
 - The reason given for the condition is: To allow the District Planning Authority to retain control over the development.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form provides the reference number 5/99/1354 for the outline permission for the demolition of the existing buildings and the erection of 40 houses at the former NHS Stores, Hill End Lane, St Albans. However, both the appeal form and the Council's decision notice refer to the removal of condition 1 of Ref 5/2001/0684, which was an approval of reserved matters submitted subsequent to the outline permission. I have dealt with this appeal on the same basis.
3. The appeal site is in the Green Belt. Neither party has suggested that the proposal represents inappropriate development in the Green Belt. As I have no evidence to indicate otherwise, I have proceeded on the basis that the proposal would not comprise inappropriate development in the Green Belt.

Background and Main Issues

4. The appellant is seeking to remove condition 1 which would have the effect of allowing permitted development rights within Classes A, B, D and E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) to be exercised by

all of the householders within the area covered by the outline permission. The main issues in this appeal are the effect of this proposed change on the living conditions of the existing occupiers of the appeal site, with particular reference to privacy; and on the character and appearance of the surrounding area.

Reasons

Living Conditions

5. The appeal site covers a number of properties on Sovereign Park and Grafton Close developed as part of Ref 5/99/1354. It is located adjacent to a Phase 2 development (Ref 5/97/0258), which is not subject to the same restrictions with respect to permitted development rights.
6. It is common ground between the main parties that the removal of condition 1 would allow householders within the appeal site to erect roof-level dormer extensions. It is true that the GPDO provides some in-built protection for the living conditions of existing residents, through its provisions, and that the Planning Practice Guidance (PPG) provides that, amongst other things, area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity¹. Nevertheless, these are not absolute rights, in that planning law allows for their restriction, where justified.
7. The officer's report for the reserved matters application² states that following extensive negotiations with respect to the erection of 40 houses, the problems of distancing and overlooking were addressed either by increased distancing between elevations or through design (for example, by removing overlooking windows or by using obscure glazing). As such, it is clear that the resulting development is sensitive to changes with respect to the potential for overlooking.
8. In particular, I observed that 4 and 5 Sovereign Park have modest rear gardens with minimal separation distances between the properties and 21 to 25 Sovereign Park consist of a group of terraced housing with fairly short rear gardens. Similarly, several of the properties within the appeal site at Grafton Close are tightly-packed with fairly small rear gardens. Additionally, although separation distances between properties within the appeal site are somewhat varied, the appeal site is generally tight knit.
9. In this sensitive context, the erection of roof-level dormer extensions would be likely to create a degree of overlooking such that adjoining occupants' privacy would be materially compromised, particularly in their rear garden areas. I observed the rooflights at 20 Grafton Close but roof-level dormer extensions would likely involve a greater potential for overlooking than rooflights, as rooflights usually result in views towards the skyline.
10. Hence, taking account of both the PPG and paragraphs 54 and 56 of the National Planning Policy Framework (the Framework), condition 1 is reasonable and necessary to safeguard the living conditions of existing occupiers, with particular reference to privacy. With condition 1 in place, the Council would be able to apply the provisions of Policy 70 of the St Albans District Local Plan

¹ Paragraph 21a-017-20190723

² 5/2001/0684

Review (adopted 1994) (Local Plan), which refers to, amongst other things, visual privacy in private gardens, when considering full planning applications on a case-by-case basis.

11. I note that some householders in the Phase 2 development have erected dormer extensions, including at 2 and 6 Grafton Close. The appellant has also referred to planning permission Ref 5/2015/3007 at 15 Grafton Close, and to Certificates of Lawfulness 5/2016/1683 and 5/2021/0045 at 20 Grafton Close, within the appeal site. However, these do not alter my finding that the proposal before me would potentially allow harmful development to result.
12. I have had regard to the extracts from several appeal decisions³. I note the principles referred to in those decisions, but as no plans or other visual materials have been provided, I cannot be certain that the circumstances are sufficiently similar to the proposal before me. Accordingly, these examples do not change my findings.
13. In conclusion, the proposed removal of condition 1 would have an unacceptable and harmful effect on the living conditions of the existing occupiers of the appeal site, with particular reference to privacy. Consequently, condition 1 is reasonable and necessary. The proposal would not comply with Policy 70 of the Local Plan which aims to, amongst other things, secure privacy between dwellings. It would also conflict with paragraph 130 of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Character and Appearance

14. Whilst not identical, houses within the appeal site generally exhibit a high degree of uniformity in terms of their overall scale and roof forms. This architectural design aesthetic contributes to the cohesive sense of place in this location. The removal of condition 1 would provide householders across the appeal site with the option to exercise permitted development rights to enlarge their properties by way of dormer extensions, as one example. Although the site is not within a Conservation Area, the cumulative effect of such extensions could potentially disrupt the uniformity that I have described. Similarly, the exercise of permitted development rights under Class E of Part 1 of Schedule 2 of the GPDO would potentially result in visual clutter in this generally tight knit area. In these scenarios, harm to the character and appearance of the area would be likely to result.
15. Although reference has been made to a planning application⁴ where Policy 72 of the Local Plan was considered, Policy 72 relates to planning applications for extensions to dwellings and accordingly is not directly relevant to the appeal before me, which is concerned with the restriction of permitted development rights. Furthermore, whilst I note the age of the Local Plan, I have not found any specific inconsistencies with the Framework or other Government policies, nor with planning law. Moreover, the availability of certain permitted development rights at the Phase 2 development does not alter my finding that the proposal before me would potentially allow harmful development to result.

³ APP/Q5300/A/14/2217664; APP/H1515/W/19/3242789; APP/R0660/W/20/3244726

⁴ 5/2019/1787

16. I therefore conclude that the proposed removal of condition 1 would have an unacceptable and harmful effect on the character and appearance of the surrounding area. Accordingly, condition 1 is reasonable and necessary. The proposal would conflict with Policy 70 of the Local Plan which aims to, amongst other things, provide attractive spaces. It would also conflict with paragraph 130 of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character.

Other Matters

17. The proposal would potentially allow the appellant and other householders within the appeal site to extend their properties via permitted development rights, which would improve their living conditions. Nevertheless, the planning harm identified on both main issues would be substantial and therefore this matter does not outweigh the harm identified, nor the conflict with the development plan.

18. I note the lack of objections from technical consultees at application stage. I have also had regard to the representation from a local resident, supporting the proposal. Nevertheless, on both of the main issues I have found that the proposal would result in tangible harm, and this harm would persist notwithstanding the support for the proposal. Moreover, it follows from my reasoning on both main issues that many of the concerns expressed by local residents are well-founded.

19. The PPG provides that, amongst other things, the scope of conditions which restrict the future use of permitted development rights needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn⁵. In this respect, condition 1 does not refer to specific Classes within the GPDO, and there is arguably some overlap with condition 2. Nevertheless, as condition 1 states 'no enlargement of the dwellings(s)' shall take place, it is clearly precise enough for the purposes of enforcement action. As such, no amendment to its terms is necessary.

Conclusion

20. For the reasons given above, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR

⁵ Paragraph 21a-017-20190723