
Appeal Decision

Site Visit made on 13 July 2021

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th February 2022

Appeal Ref: APP/C2708/W/21/3272876

Former Rockwood House, Park Wood Close, Skipton BD23 1QW

- 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 Robert Firth of Firth Developments Ltd against the decision of Craven District Council.
 - The application Ref: 2021/22385/VAR, dated 7 January 2021, was refused by notice dated 25 March 2021.
 - The application sought planning permission for a development described as: Construct 6 no. detached dwellings with associated vehicular access and landscaping, without complying with a condition attached to planning permission Ref: 2020/21661/MMA, dated 4 August 2020.
 - The condition in dispute is No. 2 which states that: The permission relates to the following plans and is followed by a schedule setting out the approved drawing numbers.
 - The reason given for the condition is: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with Policy ENV3 of the Craven Local Plan and the National Planning Policy Framework.
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of 6 no. detached dwellings with associated vehicular access and landscaping, without complying with a condition attached to planning permission Ref: 2020/21661/MMA, dated 4 August 2020 at Former Rockwood House, Skipton , BD23 1QW in accordance with the terms of the application, Ref: 2021/22385/VAR, dated 7 January 2021, and subject to the conditions in the attached schedule.

Applications for costs

2. An application for Costs as made by Mr Robert Firth against Craven District Council. This application is the subject of a separate decision.

Preliminary Matters

3. From the information provided by the parties, the planning permission Reference: 2019/20096/FUL for the development of the site was originally granted at appeal¹. Following this, a further application was submitted under Section 73 of the Town and Country Planning Act 1990 (the Act), Reference: 2020/21661/MMA, which amended the approved drawings to change some of the design details of the proposed dwellings. This application did not make any changes to the height, footprint or general massing of the dwelling proposed on

¹ Appeal Reference: APP/C2708/W/19/3237080

Plot 1. A permission granted under Section 73 of the Act creates a new planning permission subject to different conditions. The current appeal proposal sought to substitute further amended drawings to replace those approved under the terms of planning permission Reference: 2020/21661/MMA. The effect of this would be to increase the height of the external walls and the ridge of the roof of the proposed dwelling on Plot 1 of the development to create a two storey dwelling. From the evidence provided, Planning Permission Reference: 2020/21661/MMA is the scheme that has been implemented and I have considered the appeal with reference to the plans approved under this permission.

4. The Planning application form for the appeal proposal describes the previously approved development, which the application seeks to amend, as: "Minor material amendment to application allowed under appeal reference APP/C2708/W/19/3237080 granted 29 April 2020. To allow for rear ground floor window amendments to plots 3,4,5 and 6, rear first floor bathroom window re-positioned to plots 3 and 4, removal of stone mullions to rear windows of plots 3, 4, 5 and 6, removal of jambs to side and rear elevations of plots 3,4,5 and 6, with the exception of rear doors to plots 5 & 6, reduction in height of stone heads to windows and doors, amendment to front first floor window to plots 1 and 2".
5. The Decision Notice issued by the Council for the appeal proposal uses the description "Minor material amendment to vary condition no. 2 (approved plans) of planning appeal APP/C2708/W/19/3237080 granted 29 April 2020 and 2020/21661/MMA granted 04 August 2020". The appellant has also used this description on the appeal form.
6. As referred to above, an application granted planning permission under Section 73 of the Act creates a new planning permission for the development originally proposed but subject to a different set of conditions. It is common practice to refer to such applications as "minor material amendments" or "variation of conditions", and the descriptions set out in the preceding paragraphs are accurate in so far as they describe the effect of the proposals. However, planning permission Reference: 2019/20096/FUL granted planning permission for a development described as: "Construct 6 no. detached dwellings with associated vehicular access and landscaping." A permission granted under Section 73 of the Act does not change the description of the development originally applied for. Notwithstanding how it is described on the planning application form and decision notice, Planning Permission Reference: 2020/21661/MMA granted planning permission for the same development permitted by 2019/20096/FUL. The appeal proposal also sought permission for the same development, albeit subject to a different condition relating to the drawings. Consequently, it is more correct to describe the current proposal in the same terms as the original permission, 2019/20096/FUL, and I have therefore used that description for the purposes of the appeal.
7. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). The views of parties were sought on any implications of the revised Framework on their respective cases. The appellant advised that they had no further comments and no response was received from the Council. I have determined the appeal taking account of the revised Framework.

Main Issue

8. The main issue in this appeal is the effect that varying the approved drawings would have on the living conditions of the occupiers of Coach House, with particular regard to outlook.

Reasons

9. The current planning permission for the site includes a single storey dwelling with rooms within the roof space on Plot 1. This was, with the exception of certain small details, unchanged from the house design originally approved at appeal.
10. The appeal proposal seeks to change the design of the house type on Plot 1 to a conventional two storey dwelling. This would maintain the same footprint as the approved dwelling on this plot but increase the height of the external walls by approximately 1.5 metres resulting in an increase in overall height and an increase in floor area of the first floor of the proposed dwelling. The siting of the proposed dwelling would remain unchanged from the originally approved position. The remainder of the development would also be unchanged.
11. From the information I have been provided with, the proposed dwelling is essentially the same as a dwelling proposed on Plot 1 by an earlier planning application made in 2018 for six dwellings on the wider site, Referenced 2018/19747/FUL, that was refused planning permission by the Council and a subsequent appeal against that refusal was dismissed in 2019².
12. Policy ENV3 of the Craven District Local Plan 2019 (the Local Plan) expects, among other matters relating to the design of new developments, that development should protect the amenity of existing residents. This is consistent with the requirements of the Framework.
13. I saw when I visited the site that Coach House, a two storey property, is located at a higher level than the appeal site due to the steeply sloping nature of Park Wood Close. I also observed that due to the configuration of the property, the majority of the windows to principal habitable rooms face toward the appeal site. The proposed dwelling on Plot 1 would be located directly to the south of the Coach House.
14. It was evident from my site visit and from the site section drawings provided for both the approved and proposed schemes, that the proposed alteration to the design of the dwelling on Plot 1 would result in a greater extent of the rear wall of the new dwelling being visible above the boundary between the two properties than previously. This would increase the perceived massing of the proposed dwelling when viewed from Coach House. However, I am mindful that the existing, approved, dwelling would also have an effect on the outlook from this property.
15. My attention has been drawn to the previous planning application and appeal decision that relates to the appeal site and proposed a two storey dwelling, essentially similar to the appeal proposal on Plot 1. However, I note that the Council's reason for refusal in that case, whilst it refers to the dwelling on Plot 1, states that the development would result in a significant adverse overbearing impact on the existing dwellings to the east and south of the site. The Coach

² Appeal Reference: APP/C2708/W/19/3220508

House is located to the north of Plot 1. Whilst in dismissing that appeal, the Inspector did not find harm other than to the dwelling at number 9 Park Wood Close, located to the south of the appeal site, the Inspector's Decision Letter makes clear that he did not specifically assess the effect of this proposal on properties to the north.

16. Although the Council sets out in its Statement of Case that it has continued to maintain its objection to a two storey dwelling on Plot 1 on the grounds of amenity, from what I have read the Council did not raise the effect on Coach House as part of the reason for refusal for planning application Reference: 2018/19747/FUL.
17. The dwelling on Plot 1 would be sited at a lower level than Coach House and would be separated from the front elevation of the latter by a driveway and garden area resulting in a separation distance of approximately 14 metres between the two buildings. Although the appeal proposal would result in a taller building, due to the degree of separation between the buildings, the resulting building would not be so close to Coach House that it would appear substantially more oppressive or overbearing than the currently approved dwelling which could be constructed under the terms of the extant permission.
18. The proposed dwelling on Plot 1 would have three windows in the rear elevation facing towards Coach House. I have not been made aware of any policies that the Council have in respect of separation distances. The separation distance between the two buildings would be less than the 21 metres generally considered to be acceptable to prevent mutual overlooking where the front or rear elevations of two dwellings face each other. However, from the submitted drawings these windows would serve two bathrooms and a stairwell/landing. The bathroom windows would be opaque glazed and the opportunities for casual overlooking from the stairwell window would be limited. I have noted that the Council have not raised any concerns in respect of overlooking or privacy and there is nothing in the evidence that would lead me to find otherwise.
19. There is no technical evidence before me with regard to the effect of the proposal on daylight and sunlight. The proposed two storey dwelling would, however, be located to the south of Coach House and consequently will have an effect. The Council officer's report identifies that some overshadowing will occur to the garden and driveway of the Coach House and some increased overshadowing of windows in the gable end.
20. From my inspection of the submitted drawings and from what I saw when I visited the site, I would agree that the appeal proposal would result in some additional overshadowing of the open area to the front of Coach House. However, I am less persuaded that this would affect the windows in its gable end facing Park Wood Close. Although the appeal proposal would have a greater effect than the previously approved scheme, I do not find that either in isolation, or cumulatively with other effects, that this would make Coach House a less pleasant place to live.
21. I therefore conclude that the proposed development would not cause harm to the living conditions of neighbouring residents at Coach House, with particular regard to outlook. It would comply with the relevant requirements of Local Plan Policy ENV3 and the Framework.

Other Matters

22. The appeal site is located close to the boundary of the Skipton West Conservation Area. From the information I have been provided, this has contiguous boundaries with the Skipton Conservation Area and the Skipton South Conservation Area. The appeal site is located within an area of modern housing adjacent to the conservation area boundary and is separated from it by buildings and their curtilages on the opposite side of Park Wood Close. Although this is within the setting of the conservation area, from what I saw when I visited the site, this part of the setting makes no substantive contribution to the significance of the conservation area or the understanding of it. Consequently, the proposed development would have a neutral effect.
23. I have had regard to the representations made by interested parties both in relation to the original planning application and following notification of the appeal. Some of the points raised have been addressed under the main issue above.
24. A number of representations make reference to the description of the proposal used by the Council, namely minor material amendment, and suggest that the appeal proposal is not a minor amendment. As set out in the preliminary matters, an application made under Section 73 of the Act is an application for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. Although the practical effect of the proposal is to alter the design of one house, the application, nonetheless, relates to the development of 6 dwellings as a whole.
25. The Planning Practice Guidance sets out that there is no statutory definition of a minor material amendment, but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
26. In practice, it is a change to the proposal that is significant or important (material), but the magnitude of the change is not so great as to substantively or fundamentally alter the nature of the development proposed (minor). For procedural purposes, the proposed alteration to the dwelling on Plot 1 has to be taken in the context of the overall development comprising 6 dwellings and not in isolation by comparison solely to the previously approved house type.
27. The currently approved development was described as "Construct 6 no. detached dwellings with associated vehicular access and landscaping" and is comprised of four two storey dwellings and two single storey dwellings with rooms within the roof space. The appeal proposal would not result in the development falling outside the scope of the description, nor would it result in an increase in the number of dwellings. The alteration to the dwelling on Plot 1 would result in a noticeable change to the appearance of the development and the height of this individual building. However, within the context of a scheme of six dwellings, four others of which are two storey this would not, in my view, substantively or fundamentally alter the nature of the development taken as a whole. I am also mindful that the Council accepted, processed, and determined the application that now forms the subject of the appeal and, consequently, must also have been satisfied of the appropriateness of the proposal proceeding as a minor material amendment.

28. A number of interested parties have also referred me to the most recent appeal decision relating to the site (Ref: APP/C2708/W/19/3237080), and in particular to the Inspector's reference to that scheme proposing less total built mass than the previously dismissed scheme (Ref: APP/C2708/W/19/3220508). Although this is a statement of fact, it has to be read in the context that the Inspector accepted the findings of the Inspector in the earlier appeal who only found harm to the occupiers of number 9 Park Wood Close and did not find harm to any other properties from the two storey dwelling proposed on Plot 1 at that time. Also, as set out above, the development that formed the subject of appeal Ref: APP/C2708/W/19/3220508 included a two storey property on Plot 1, however, the effect of this on properties to the north did not form part of the Council's reasons for refusal of that proposal, or the initial Inspector's reason for dismissing the appeal.
29. Whilst Plot 1 and Plot 2 are cited in the reason for refusal in respect of appeal Ref: APP/C2708/W/19/3220508, it is clear from the decision that the Inspector dismissed the appeal primarily due to the effect of the proposed two storey dwelling on Plot 2 on the occupiers of number 9 Park Wood Close. In the current proposal, due to the degree of separation between Plot 1 and number 9 Park Wood Close and the presence of an intervening building on Plot 2, I do not consider that the proposed development would cause any harm to the living conditions of the occupiers of number 9.
30. Neither of the previous Inspectors found that the development of the site would cause harm to the living conditions of occupiers of properties on the east side of Park Wood Close. From what I have read, and from what I saw when I visited the site, I would agree with these findings due to the degree of separation between the existing and proposed dwellings.
31. Concerns have additionally been raised in terms of the effect on the visual appearance of the area. I saw when I visited the site that the immediately surrounding area comprises a relatively modern development of predominantly detached bungalows and two storey houses. Many of the latter are orientated with a gable elevation facing the road in a similar manner to the proposed dwelling on Plot 1. I also observed that there are instances, including on Park Wood Close, where there are two storey houses located upslope from a neighbouring bungalow. The materials proposed are similar to those of the surrounding houses. Within this context I do not find that the proposed development would be inconsistent with the character and appearance of the surrounding area.
32. Interested parties have also commented that there is a greater need for smaller house types in the district and the additional four bedroom house that would result from the proposal would not help meet this demand. I have no substantive evidence in respect of local housing demand before me and consequently cannot verify these comments. This notwithstanding, taken in isolation and having regard to the scale of the development proposed, this matter would not warrant refusing planning permission.
33. A number of interested parties have also raised concern regarding disturbance from the construction site. It is inevitable that there will be some noise and disturbance arising from construction activities and planning permission could not be withheld on these grounds. The previously approved schemes have not been subject to a condition restricting site working hours, and the Council has

not suggested such a condition is necessary in this case, although I note that the previous permissions were subject to a condition that restricts the times that deliveries to the site can be undertaken.

34. It is possible to control site working hours through the use of a planning condition. In granting permission under Section 73 of the Act, new conditions may be imposed provided that they do not materially alter the development that was subject to the original permission and are conditions that could have been imposed on that original permission.
35. However, the Framework and the Planning Practice Guidance set out that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. A condition must meet all six of these tests to be valid. Where planning permission is granted under Section 73 the original planning permission continues to exist and the applicant can choose which permission to implement. Neither of the previous planning permissions for the site were subject to restrictions on site working hours and to attach such a condition to any permission for this proposal would be to impose more onerous conditions on the new permission than existed previously. This would not meet the test of reasonableness and, consequently, I am unable to include a condition to control site working hours.
36. None of the matters that have been raised lead me to a different conclusion in respect of the appeal or the principal disputed matter.

Conditions

37. The original planning permission (2019/20096/FUL) was granted subject to a number of conditions and the Council have advised which of these are still operative and were carried forward to the subsequent planning permission for the site (2020/21661/MMA).
38. I have considered these remaining conditions in relation to the tests set out in the Framework and the Planning Practice Guidance. I am satisfied that the tests are met and that it is necessary that these are also imposed on this planning permission in order to ensure that it is consistent with the previous planning permissions. I have updated the condition specifying the approved drawings in order to provide certainty in respect of what has been granted permission. I have also slightly amended the wording of Condition 4 to make it clearer when vehicles can visit the site.

Conclusion

39. I have found that the proposed development would not cause harm to the living conditions of the occupiers of Coach House, with particular regard to outlook. It would therefore comply with the relevant requirements of Local Plan Policy ENV3 and the Framework. No material considerations have been identified that would indicate that a decision should be made other than in accordance with the development plan.
40. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. 808-01(--)001 - Location Plan; Drawing No. 808.01(--)002 Rev J- Existing Site Plan; Drawing No. 808.01(--)004 Rev J - Proposed Site Plan; Drawing No. 808.01(--)007 – Site Plan; Drawing No 808.01(--)008-Rev A- Block Plan; Drawing No. 808.01(--)009 Rev A - Site Sections; Drawing No. 808.01(--)020 Rev E - Plot 2 (In so far as it relates to House Type T2 only) Plans and Elevations; Drawing No.808.01(--)020 Rev G - Plot 1 House Type 1 Plans and elevations; Drawing No. 808.01(--)021 Rev F - Plots 3 & 4 (Type T3) Plans and Elevations; and Drawing No. 808.01(--)022 Rev F - Plot 5 (Type T4) and 6 (Type T5) Plans and Elevations.
- 2) No movement by construction or other vehicles shall take place between the highway and the site, except for the purposes of constructing the initial site access, until that part of the access(es) extending 10m into the site from the carriageway of the existing highway has been made up and surfaced in accordance with the approved details and/or standard detail number A1 and the published specification of the highway authority. The measures shall be implemented as approved unless otherwise approved in writing by the local planning authority in consultation with the highway authority. Any damage during use of the access until the completion of all the permanent works shall be repaired immediately.
- 3) There shall be no access or egress by any vehicles between the highway and the application site, except for the purposes of constructing the initial site access, until splays are provided giving clear visibility of 45m measured along both channel lines of the major road from a point measured 2.4m down the centre line of the access road. The eye height will be 1.05m and the object height shall be 0.6m. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 4) During construction works, the following types of vehicles shall not arrive, depart, be loaded, or unloaded at the site outside of the hours of 09:00 and 15:00 on Monday to Friday, or at any time on Saturday, Sunday, or a Bank Holiday: a) Light Goods Vehicles exceeding 3.5 tonnes; b) Medium Goods Vehicles up to 7.5 tonnes; and c) Heavy Goods Vehicles exceeding 7.5 tonnes.
- 5) Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B, C, D, E & F of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), or any equivalent Order following the revocation and re-enactment thereof (with or without modification), the dwellings hereby approved shall not be altered or extended, including by conversion of garages into domestic accommodation, and no buildings or structures shall be erected within its curtilage, without first submitting details and receiving written approval by the Local Planning Authority.