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# Appeal Decision

Site visit made on 21 June 2022

**by A Berry MTCP (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 July 2022**

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**Appeal Ref: APP/F2415/W/22/3290836**

**41 Main Street, Great Bowden LE16 7HB**

- 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 Mr and Mrs Gray against the decision of Harborough District Council.
  - The application Ref 21/00567/FUL, dated 12 March 2021, was refused by notice dated 21 July 2021.
  - The development proposed is described as “proposed dwelling”.
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## Decision

1. The appeal is allowed, and planning permission is granted for a proposed dwelling at 41 Main Street, Great Bowden LE16 7HB in accordance with the terms of the application, Ref 21/00567/FUL, dated 12 March 2021, subject to the conditions in the schedule to this decision below.

## Main Issues

2. The main issues are the effect of the proposed development on (a) the character and appearance of the surrounding area; and (b) the living conditions of the occupiers of neighbouring properties.

## Reasons

### *Character and Appearance*

3. No 41 Main Street comprises a two-storey detached dwelling located at the end of a row of residential properties that are accessed via a single width unmade private road from Main Street to the adjacent railway line. The dwellings comprise a mix of styles and materials. No 41 Main Street is set within a substantial plot. The plots of the other dwellings in the row vary in size and shape. The adjacent properties follow a similar building line to the front, with No 41 Main Street set forward, whilst the building line to the rear fluctuates. The varying appearance of the dwellings contributes positively to the area’s pleasant character.
4. The proposal would result in the sub-division of No 41 Main Street’s rear garden. However, the resulting plots would be generous and comparable in size to others in the surrounding area. The ground levels would be reduced so the proposed dwelling would be constructed on an equivalent one to No 41 Main Street and be of a similar overall height. The footprint of the dwellings in the surrounding area varies, with that of the proposed not dissimilar to some of the existing.

5. The use of Oak/Cedar boarding and large glazed windows and doors are not features generally found on other dwellings. However, the cladding would be limited to the side elevations, and the glazing would be to the rear. In addition, Policy GD8 of the Harborough Local Plan (LP) supports individual and innovative design.
6. The proposed dwelling would be sited beyond the rear elevations of the existing dwellings within the row, and to the rear, buildings do not follow a cohesive building line and the rear boundaries of the plots are not uniform. I saw from my site visit that the existing dwellings are not highly visible from the public footpaths to the rear, nor from the railway bridge, due to the undulating ground levels and their distance from the appeal site. Existing tree cover also screens the appeal site, which I note may differ when not in leaf, however any glimpses of the proposed dwelling would be viewed against a backdrop of the existing built form.
7. The proposed development would not therefore harm the character or appearance of the area. It would therefore comply with Policy GD8 of the LP and Policy H6 of the Great Bowden Neighbourhood Plan (GBNP), which together require developments to, amongst other things, respect and enhance both the local character and distinctiveness of a settlement.

#### *Living Conditions*

8. The proposed dwelling would be sited adjacent to No 45 Main Street's detached garage and the proposed dwelling's detached garage would be sited adjacent to No 45 Main Street's rear patio/seating/BBQ area. A single storey rear outrigger at No 45 has patio doors and windows adjacent to the boundary shared with the appeal site that overlook the patio/seating/BBQ area.
9. Both the proposed dwelling and garage would be sited away from the shared boundary, with the existing boundary planting within the appeal site retained and a further planting strip proposed alongside. The appeal site would be excavated so that the proposed dwelling and garage would be set on a lower ground level to No 45's rear garden. The proposed garage would be single storey with a flat roof, as would the sections of the proposed dwelling sited closest to the boundary shared with No 45.
10. There would be no overlooking of No 45 from the ground floor windows of the proposed dwelling due to the height of the existing boundary treatments, the existing and proposed boundary planting, and the lowered ground levels. The first floor window in the front elevation of the proposed dwelling closest to No 45 would serve an en-suite and is to be obscured glazed and non-opening. Three bedroom windows would be located within the proposed dwelling's rear elevation, one of which would include patio doors leading onto a balcony. The two windows closest to the boundary shared with No 45 would have an oblique view across the neighbouring property's rear garden, however, this would be the rearmost section of the garden, rather than the patio/seating/BBQ area that would be more frequently used. The proposed balcony would be positioned adjacent to the railway line, a significant distance from the boundary shared with No 45.
11. No 47 Main Street has windows that directly face towards the appeal site. The ground floor windows are currently obscured by the existing intervening boundary treatments, and this would not change. I noted on my site visit, that

No 47 also has first floor windows facing towards the appeal site. However, these windows would directly face the proposed garage that would be of a lower height with a flat roof and therefore the existing windows would not be obscured by the proposed dwelling.

12. I concur that the proposed development would result in vehicles parking and turning within part of No 41 Main Street's rear garden where vehicles are not currently present. However, vehicles currently travel in proximity to the side and rear elevations of No 41 to access the existing detached double garage. No 45's driveway passes alongside the dwelling and patio/seating/BBQ area towards an existing detached garage, parking and turning area located in the dwelling's rear garden. No 45's driveway is also adjacent to No 47. The existing properties therefore currently experience noise associated with the comings and goings of vehicles in proximity to their dwellings and within their rear gardens. Furthermore, the vehicle movements associated with one dwelling would be low and the siting of the detached garage, together with the existing and proposed vegetation along the boundary shared with No 45, would dissipate some of the associated noise.
13. The section of garden on which the proposed dwelling would be sited would be excavated and the spoil removed from the appeal site via the existing single width private road, in proximity to neighbouring properties. The appellant has provided calculations for the amount of spoil to be removed and the number of vehicle movements, which are lower than the figures produced by interested parties. The appellant's figures have not been disputed by the Council. The vehicle movements associated with the removal of the spoil would result in some noise, disturbance and vibration to the living conditions of the occupiers of neighbouring properties. However, any harm arising would be short-term and the hours in which such vehicles could operate could be controlled by condition. Furthermore, the Council's Environmental Health Officer has not raised an objection in this regard.
14. For the reasons I have given, the proposed development would not be harmful to the living conditions of neighbouring occupiers. As per the aims of Policy GD8 of the LP and Policy H6 of the GBNP.

### **Other Matters**

15. The relevant consultees do not raise an objection to the appeal scheme in regard to highway safety, the proximity of the railway line, ecology or flooding. I have no reason to form an alternative view. The potential damage to the foundations of neighbouring properties and the private access track are outside the scope of the planning regime and there is no reason to suppose that the proposed development would necessarily cause any damage. A right of access over the private access track, and any damage to third party land or property is a civil matter.
16. My attention has been drawn to previous refusals of planning permission for housing on the appeal site, as well as comments made in respect of the appeal site within the council's Strategic Housing Land Availability Assessment (SHLAA). However, I have not been provided with full details of these cases and in any event, each application must be determined on its own merits.
17. The appeal site is located within the Great Bowden Conservation Area (GBCA) therefore I have a statutory duty under Section 72(1) of the Planning (Listed

Buildings and Conservations Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. As the appeal proposal is to the rear of the host dwelling, not readily visible from any public area, and is acceptable in design terms, the character and appearance of the GBCA would be preserved.

### **Conditions**

18. The council has provided a list of conditions which I have had regard to. In addition to the standard condition, which limits the time for the commencement of development. I have specified the approved plans for the avoidance of doubt. Conditions relating to the submission and approval of materials; the submission, approval and implementation of a landscaping scheme; the retention of existing trees and hedges; and the submission and approval of the provision of a bin storage area, are necessary to ensure the appearance of the proposed development would be satisfactory.
19. In relation to a programme of archaeological works, this is necessary due to the appeal site being located within in an area of archaeological interest and the proposed development involves the excavation of ground levels. A condition in respect of a Construction Method Statement is necessary to protect the living conditions of the occupiers of neighbouring properties, protect highway safety and due to the proximity of the adjacent railway line. Both these conditions are pre-commencement, and the appellant has not objected to their inclusion.
20. I am satisfied that the condition in respect of parking and turning facilities for the existing and proposed dwelling is necessary in respect of highway safety, and that a surface water drainage strategy is necessary to ensure existing and future residents are not affected by surface water run-off, given that the existing ground levels are to be reduced.
21. The inclusion of conditions in respect of the first floor en-suite window being obscure glazed and non-opening and no additional windows to be inserted into the front and side elevation closest to No 45 Main Street are necessary to protect the living conditions of the occupiers of neighbouring properties. However, to ensure the reasonableness of the obscure glazing condition, I have amended the wording to only limit the non-opening parts of the window to below 1.7 metres above the internal floor of the room.
22. The council has requested the removal of permitted development rights within Classes A-H, Part 1, Schedule 2 and Class A, Part 2, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. The Planning Practice Guidance states, "conditions restricting the future use of permitted development rights...may not pass the test of reasonableness or necessity". The appeal site comprises a substantial plot and therefore any future extensions, alterations or outbuildings could be accommodated without harm to the living conditions of the occupiers of neighbouring properties. Furthermore, the siting of the proposed dwelling would ensure that any future extensions, alterations or outbuildings could be undertaken without harm to the character or appearance of the area. Limitations on what could be achieved under the permitted development regime are also further restricted by the appeal site's location in the GBCA. Therefore, the removal of permitted development rights from the appeal site would be unreasonable.

23. Although not included in the Council's list of conditions, I note that the Contaminated Land and Air Quality Officer requested conditions in respect of contamination due to the proximity of the adjacent railway line and the potential for ground contamination to be present. I agree that these conditions are necessary to make the proposed development acceptable. The appellant has not objected to the inclusion of this pre-commencement condition.

### **Conclusion**

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

*A Berry*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 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, Existing Site Layout 2859/1, Proposed Floorplans 2589/24, Proposed Elevations 2859/25 Rev A and Proposed Site Layout 2859/26 Rev B.
- 3) No above ground works shall take place until a schedule indicating the materials (including details for the sedum roof for the garage) to be used on all external elevations of the development hereby permitted has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be implemented in accordance with the approved details.
- 4) No demolition/development shall take place until a staged programme of archaeological work, commencing with an initial phase of trial trenching has been undertaken. Each stage will be completed in accordance with a written scheme of investigation (WSI), which has been submitted to and approved by the local planning authority in writing. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, and the programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works and the programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.
- 5) Prior to the first occupation of the dwelling hereby permitted, a landscaping scheme shall be submitted to and approved in writing by the local planning authority. The landscape scheme shall include full details of proposed hard and soft landscape works, including: access, driveway, parking, turning and all other surfacing materials; boundary treatments; a 'buffer zone'; new planting/hedges/trees (including new hedgerow planting within the 'buffer zone' as per the approved site plan); screened

bin store area; a timetable of implementation and a management plan. Thereafter, the landscape scheme shall be carried out in accordance with the approved details prior to the first occupation of the dwelling. Any trees, shrubs, hedges or plants which, within a period of five years from their date of planting, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 6) Unless shown on the approved plans for removal or subsequently approved for removal as part of the approved landscaping scheme, the existing trees and hedges on site shall be retained.
- 7) No development shall take place (including any site clearance/preparation works), until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. Details shall provide the following, which shall be adhered to throughout the construction period:
  - a) the parking of vehicles of site operatives and visitors;
  - b) loading/unloading and storage of plant, materials, oils, fuels, chemicals and other construction materials;
  - c) wheel washing facilities and road cleaning arrangements;
  - d) hours of construction work, site opening times, hours of deliveries and the removal of materials;
  - e) full details of any piling technique to be employed, if relevant;
  - f) routing of construction traffic; and
  - g) measures to control the emission of dust and noise during construction.
- 8) Prior to the construction of any external walls, a plan showing the parking and turning facilities for both the existing dwelling and the dwelling hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling hereby permitted, and retained free from obstruction thereafter.
- 9) The first floor front (northern) elevation window closest to the side (west) boundary with No 45 Main Street and shown as an en-suite on the approved plan, shall be fitted with obscure glass (minimum Level 3). The window shall be non-opening below 1.7 metres above the internal floor of the room. The window shall remain in such a form thereafter.
- 10) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no additional windows/rooflights other than any permitted shall be inserted on the front (north) or side (west) elevation of the dwelling hereby approved.
- 11) Prior to any development above damp proof course taking place, a scheme for on-site foul water drainage works, shall be submitted to, and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling hereby permitted and retained thereafter.
- 12) No drainage works shall commence until a surface water management strategy has been submitted to and approved in writing by the local



planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling hereby permitted and retained thereafter.

- 13) Prior to the first occupation of the dwelling hereby permitted, details of the provision for the storage of refuse and materials for recycling shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details prior to the first occupation of the dwelling hereby permitted and retained thereafter.
- 14) No development (except any demolition permitted by this permission) shall take place, or part thereof, until a Risk Based Land Contamination Assessment has been submitted to and approved in writing by the local planning authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
- BS10175:2011+A2:2017 Investigation Of Potentially Contaminated Sites Code of Practice;
  - BS8576:2013 Guidance on Investigations for Ground Gas – Permanent Gases and Volatile Organic Compounds (VOCs); and
  - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004;
  - Or any documents which supersede these.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, a Remedial Scheme and a Verification Plan must be prepared and submitted to and agreed in writing by the local planning authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; and
- BS 8485:2015+A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings;
- Or any documents which supersede these.

The Verification Plan shall be prepared in accordance with the requirements of:

- Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by the Environment Agency 2010;
- CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004;
- BS 8485:2015+A1:2019 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings;
- CIRIA C735, "Good practice on the testing and verification of protection systems for buildings against hazardous ground gases" CIRIA, 2014;
- Or any documents which supersede these.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the

site and it must be reported in writing to the local planning authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the local planning authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity.

- 15) Prior to the first occupation of the development hereby permitted, either:
- a) If no remediation was required by Condition 14, a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development, or part thereof, is received and approved in writing by the Planning Authority; or
  - b) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to the whole development, or part thereof, shall be submitted to and approved in writing by the local planning authority. The Verification Investigation Report shall:
    - Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
    - Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
    - Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
    - Contain Test Certificates of imported material to show that it is suitable for its proposed use;
    - Demonstrate the effectiveness of the approved Remedial Scheme; and
    - Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

**\*\*\*End of Conditions\*\*\***