
Appeal Decision

Site visit made on 14 June 2022

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2022

Appeal Ref: APP/N3020/W/22/3290775

**Warren Hill Community Church, Muirfield Road, Bestwood,
Nottinghamshire NG5 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 Mrs Dianne Mortell of The Well Community Church Bulwell against the decision of Gedling Borough Council.
 - The application Ref 2021/0042, dated 14 January 2021, was refused by notice dated 19 November 2021.
 - The development proposed is described as “erection of 6 two storey dwellings”.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of development from the council’s decision notice and the appellant’s appeal form, as this more accurately describes the appeal proposal.

Main Issues

3. The first main issue is the effect of the development on the character and appearance of the area. The second is whether planning conditions can be imposed to make the development acceptable.

Reasons

Character and Appearance

4. The appeal site is bounded by a recreational ground to the west, whilst dwellings surround the site on all other sides. Muirfield Road is curved and there is no uniform building line. The dwellings fronting Muirfield Road adjacent to the appeal site are mixed in terms of their style. Some have single storey front projections and some have single storey garages within their front gardens. The dwellings fronting onto Shacklock Close are sited at various angles and have their rear gardens fronting Muirfield Road, with their fences abutting the pavement. On the opposite side of Muirfield Road, dwellings have their side or rear elevations facing the road, with fences abutting the pavement. The fences along Muirfield Road are prominent and create a sense of enclosure.
5. Plots 1 and 2 would be sited forward of No 121 Muirfield Road. It is agreed that the side elevations of these dwellings would be visible from Muirfield Road. However, they would appear as a continuation of the existing residential

- development. Furthermore, due to the varied building line along Muirfield Road and the sense of enclosure created by the existing boundary fences, the siting of these dwellings would not be incongruous to the character or appearance of the surrounding area or appear unduly prominent.
6. The eastern and western boundaries of the appeal site are currently defined by landscaping in the form of mature hedges and trees which screen the appeal site from Muirfield Road. This landscaping would reduce the appearance of the proposed development. Even if this landscaping were to be replaced, I am satisfied that the replacement planting could also soften the impact of the development and partially screen the proposed dwellings from Muirfield Road. Such a landscaping scheme should be secured by condition.
 7. The plot sizes of neighbouring dwellings vary in size and shape, and consequently the spacing between them. It is recognised that some plots are larger than those at the appeal site, but equally there are examples of plots that are commensurate in size with a similar grain of development as is proposed here. I therefore do not agree that the development would appear cramped or result in an over-intensive form of development that is out of character with the surrounding area.
 8. The development is largely the same as a previous scheme that was approved by the Council, ref: 2017/0557 (the 2017 permission). The Council state that due to the recent publication of the Gedling Borough Local Planning Document Part 2 Local Plan (Part 2 Local Plan) and amendments to the National Planning Policy Framework (NPPF), the development should be dismissed. No evidence has been provided as to how the Council's design policy has changed in the intervening period. Therefore, on the basis of the above evidence, even with the greater emphasis on design and the need to create beautiful places in the NPPF, I consider that the proposal would provide an acceptable effect on the character and appearance of the surrounding area.
 9. Consequently, the development would have an acceptable impact on the character and appearance of the street scene, compliant with Policy 10 of the Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies Part 1 Local Plan and Policy LPD40 of the Part 2 Local Plan, which together seek to provide a high standard of design and layout and for development to have regard to local context.

Planning Conditions

10. Should the appeal be allowed, the Council has suggested conditions, including pre-commencement conditions that require the appellant to submit information in respect of materials, a landscaping scheme, contamination, a Construction Emission Management Plan (CEMP), and a surface water drainage scheme. Section 100ZA(5) of the Town and Country Planning Act 1990 (as amended) states that "planning permission for the development of land may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition..." I must consider firstly whether planning conditions meet the policy tests set out within paragraph 56 of the National Planning Policy Framework (NPPF) and if they do, it would not be lawful for me to allow the appeal subject to pre-commencement conditions that have not been agreed in writing by the appellant.

11. It is not necessary for the submission of materials and a landscaping scheme to be pre-commencement conditions and therefore these could be rephrased so that the trigger point is at a later stage in the development process. The appellant has confirmed in writing that they are agreeable to a pre-commencement condition for drainage. However, the appellant does not accept pre-commencement conditions for contamination or a CEMP, as they state they were not imposed on the 2017 permission and because the building has already been demolished.
12. I have been provided with a copy of the 2017 decision notice and, contrary to the appellant's assertion, I note that condition 5 relating to contamination is a pre-commencement condition. The Council, within their list of suggested conditions, refers to Policy LPD 10 of the Part 2 Local Plan, which states, amongst other things, that planning permission will not be granted for development which is likely to result in exposure to sources of pollution. As this information has not been provided by the appellant, I cannot know whether the proposed dwellings would be satisfactorily safe from sources of contamination.
13. I agree that the CEMP was not included on the 2017 permission however, the Part 2 Local Plan was adopted after the 2017 permission was approved and therefore the proposed development is assessed against different policies. In this regard, the Council's list of suggested conditions refers to Policy LPD 11 of the Part 2 Local Plan which, amongst other things, requires development proposals to not adversely impact upon air quality. The CEMP is required to minimise the emission of dust and other emissions to the air "during the site preparation and construction". There is therefore clear justification that the pre-commencement conditions in respect of contamination and a CEMP are necessary to make the development acceptable in planning terms, to ensure the appeal site is safe in respect of future occupiers and their health, and to protect the living conditions and health of existing occupiers of neighbouring properties.
14. I am satisfied that these conditions cannot be imposed other than as pre-commencement conditions and they are so fundamental to the proposed development that I am unable to allow the appeal without them. The suggested pre-commencement planning conditions cannot be imposed without the appellant's agreement and the appellant does not accept their imposition. Therefore, in relation to the second main issue, without such conditions, the development would not comply with Policies LDP 10 and 11 of the Part 2 Local Plan.

Other Matters

15. I have had regard to the objections raised in relation to the proposal. Whilst I understand the concerns of residents in respect of highway issues and the impact of the development on the living conditions of occupiers, there is no substantive evidence to justify dismissal of the appeal on these matters and I note that both the Council and the Highways Authority have raised no objection in this regard. Furthermore, the Council raised no objection to the loss of a community facility or the redevelopment of the site for a community use and I have no reason to come to a different view.
16. I agree with the appellant that the proposed dwellings would be within walking distance to facilities such as the local schools and amenities, and the proposal

would make effective use of the land. However, these benefits do not outweigh my conclusion in respect of the second main issue.

Conclusion

17. For the above reasons, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR