



Appeal Decision

Site visit made on 13 September 2022

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2022

Appeal Ref: APP/V2635/W/22/3298497

Land South of 37 to 39 and North East of 33 Gaultree Square, Emneth, Norfolk PE14 8DA

- 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 Hunns against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref: 22/00093/F, dated 20 January 2022, was refused by notice dated 16 March 2022.
 - The development proposed is described as: Proposed new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The planning application form gives the site location as 'Land adjacent to 33 Gaultree Square'. The Decision Notice that was issued by the Council gives a more expanded version of the location as 'Land South of 37 to 39 and North East of 33 Gaultree Square'. This latter description more precisely identifies the location of the site and I note that the appellant has also adopted this on the appeal form. I have, therefore, used this for the purposes of the appeal.
3. The planning application was initially refused by the Council for two reasons relating to the effect on highway safety, due to the loss of parking provision for the premises at number 33 Gaultree Square, and the effect on the living conditions of the occupiers of the neighbouring dwelling. In its Statement of Case the Council sets out that the first reason for refusal, in respect of highway safety is withdrawn and Council is no longer contending this matter.

Main Issues

4. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupiers of number 37 Gaultree Square, with particular regard to sunlight, daylight, and outlook.

Reasons

5. The appeal site is a roughly rectangular parcel of land, approximately 184m² in area, that was previously used as a car parking area in connection with a business operating from number 33 Gaultree Square but is now in separate ownership. At the time of my site visit the site was enclosed by weldmesh security fencing and was heavily overgrown.

6. The only remaining disputed matter between the parties is the effect of the proposed new dwelling on the living conditions of the occupiers of the neighbouring property at 37 Gaultree Square.
7. The gable wall of this house is located on the common boundary with the appeal site and contains a ground floor window which the Council's evidence states serves a study/bedroom, and which is considered to be a habitable room. The use of this room is not disputed by the appellant.
8. The appeal proposal would result in a two storey gable wall of the proposed new dwelling being constructed approximately 1 metre from this window. The proposed new dwelling would be located to the south of number 37 Gaultree Square. The appellant accepts that the proposed new two storey dwelling would have an adverse effect on this window in terms of light and outlook.
9. The appellant suggests that there is a fallback position whereby a fence of 1.8 metres in height could be erected using permitted development rights on the common boundary between the appeal site and number 37 Gaultree Square. It is further suggested that this would in all likelihood occur, in order to protect the appellants land from unauthorised uses, and that this would completely obstruct the window in the gable of number 37.
10. In order for a potential fallback position to carry any weight, there has to be a greater than theoretical possibility that it will occur. In this case, the gable wall of number 37 sits either on, or immediately adjacent to the common boundary with the appeal site, and the photograph included in the appellant's statement indicates that beyond the building itself there is a blockwork wall on the remainder of the common boundary.
11. Consequently, whilst I accept that a fence could be erected, there would appear to be little point in doing so in this location for the stated purpose of securing the site against unauthorised uses as access could not be gained from this side. I observed when I visited the site that, whilst weldmesh security fencing was in place, this only extended to one panel on the boundary with number 37, most likely to provide stability to the fence panels on the site frontage. This panel did not extend as far as the position of the window. In this context, I am not persuaded that there is a realistic prospect that a fence would be erected in front of the window of number 37 Gaultree Square. I therefore give little weight to this point.
12. My attention has also been drawn to a previous, but now lapsed, outline planning permission for the erection of a dwelling on the site. I have been provided with some details of this. The Council state, and it is also evident from the supplied Decision Notice, that all matters were reserved for future approval. Whilst an illustrative drawing was submitted with the previous application, it is just that and clearly marked as such, and the outline permission did not approve the layout of the site, or the position, or size of the building.
13. The appellant contends that due to the relationship between the building at 37 Gaultree Square and the carriageway, it would be inevitable that vehicular access to the appeal site would be to the south side of the site and any potential dwelling would be located adjacent to the gable of number 37. Norfolk County Council, as the Highway Authority, has commented in its submissions regarding the appeal proposal that visibility from the proposed site

access onto the carriageway of Gaultree Square is restricted to the north by the neighbouring dwelling. However, the Highway Authority then go on to say that, given the appeal site's previous use as a pub car park and the resultant reduction in vehicular movements that a residential use of the site would generate, it is considered that a parallel visibility splay across the whole of the site's roadside frontage would be acceptable.

14. Although this is not commentary on a proposed access closer to number 37, it does indicate that there is flexibility in the application of highways standards to take account of real world circumstances and that an access to the north side of the appeal site would not necessarily be automatically precluded on highway safety grounds. There is little evidence before me that would indicate that it has been previously accepted that the position of the proposed dwelling in relation to the neighbouring window is acceptable. In addition, there is no evidence that this previous planning permission could still be implemented in accordance with its terms. Consequently, I can give little weight to this.
15. I have noted that the occupiers of number 37 Gaultree Square have not objected to the appeal proposal, and I am also mindful that there is no automatic right that allows a window to benefit from either light or outlook across adjoining land. Nevertheless, the fact remains that this is an existing window to a habitable room, and it is accepted by both parties that the appeal proposal would have an adverse effect on this window.
16. The proposed new dwelling would be located to the south of number 37 and would have a two storey gable located approximately 1 metre from the window in the gable. As a result of this, the proposed development would result in overshadowing and loss of light to this room and severely diminish the outlook from it. As a consequence, the neighbouring property would be a less pleasant place to live.
17. I therefore conclude that the proposed development would cause harm to the living conditions of the occupiers of number 37 Gaultree Square, with particular regard to sunlight, daylight, and outlook. It would not comply with the relevant requirements of Policy CS08 of the Kings Lynn and West Norfolk Borough Council Core Strategy 2011, Policy DM15 of the Kings Lynn and West Norfolk Borough Council Site Allocations and Development Management Policies Plan 2016, and the National Planning Policy Framework which, when read together, expect new development to be of a high standard of design and to protect the living conditions of the occupiers of neighbouring properties.

Other Matters

18. I have had regard to the fact that the site for the proposed new dwelling within a settlement that is identified for having potential for urban expansion and supporting the larger settlement and main town of Wisbech. No substantive evidence has been provided by either party in respect of housing land supply or housing delivery. Although the National Planning Policy Framework seeks to significantly boost the supply of housing, in the absence of any evidence regarding housing provision or need in the Borough, I can attribute little weight to this and the benefit from the provision of only a single new dwelling would not overcome the harm that has been identified.

Conclusion

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

John Dowsett

INSPECTOR