



Appeal Decision

Site visit made on 11 October 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8 December 2022

Appeal Ref: APP/M0933/W/22/3299726

The Langdales, Levens, Kendal LA8 8PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Dawn Osliff against South Lakeland District Council.
 - The application Ref SL/2022/0067 is dated 24 January 2022.
 - The application sought approval of reserved matters for erection of dwelling including access, design landscaping, layout and scale (Revised scheme SL/2018/0938) without complying with conditions attached to Reserved Matters Approval Ref SL/2019/0735, dated 25 September 2020.
 - The conditions in dispute are Nos. 1, 2 and 4, which state that:
 - 1) *The development hereby permitted shall be carried out in accordance with the following approved plans: Site/Block Plan Revision 3, Principal Elevation and Internal Layout Revision 3 & Proposed Elevations Revision 3;*
 - 2) *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development of the type described in Class A-E of Part 1 of Schedule 2 of that Order shall be undertaken without the express permission of the Local Planning Authority;*
 - 4) *The boundary hedge situated on the southern boundary of the site shall be retained and shall not be removed or reduced in height unless written approval is given by the Local Planning Authority.*
 - The reasons given for the conditions are:
 - 1) *For the avoidance of doubt and in the interests of proper planning;*
 - 2) *In order to protect neighbouring residential amenity;*
 - 4) *In order to preserve the neighbours living conditions.*
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Decision

1. The appeal is allowed and reserved matters approval is granted for erection of dwelling including access, design landscaping, layout and scale (Revised scheme SL/2018/0938) at The Langdales, Levens, Kendal LA8 8PJ in accordance with the application Ref SL/2022/0067, without compliance with condition numbers 1, 2 and 4 previously imposed on reserved matters approval SL/2019/0735 dated 25 September 2020 and subject to the conditions set out in Schedule 1 to this decision.

Application for Costs

2. An application for costs was made by Dawn Osliff against the Council. This application is the subject of a separate decision.

Main Issues

3. The appeal was submitted due to the Council failing to make a decision within an agreed period of time. Based on the submitted policies, my site visit, and representations from the parties; I consider the main issues to be: the effect that varying Conditions No. 1 and 4 of reserved matters approval SL/2019/0735 would have on the living conditions of the residents of Applegarth, with regard to privacy; and whether Condition No. 2 of reserved matters approval SL/2019/0735 is reasonable and necessary to safeguard the living conditions of residents of Applegarth, with regards to outlook.

Reasons

Conditions No. 1 and 4

4. The site is the garden of The Langdales, at which outline planning permission and reserved matters approval have been granted for the erection of a dwelling. The area is residential, with properties that vary in scale and design.
5. To the south the site is bounded by a tall beech hedge that separates it from the neighbouring dwelling of Applegarth. This is to be retained in accordance with Conditions No. 1 and 4 of reserved matters approval SL/2019/0735, which have been imposed in the interests of proper planning and to preserve the privacy of neighbouring residents. However, from November to May the hedge has limited foliage, such that it fails to provide adequate privacy to the residents of Applegarth during this time.
6. Tall planting between the appeal site and Applegarth is necessary. Without this, the approved dwelling would result in a significant level of actual and perceived overlooking of Applegarth, due to its proximity and the proposed ground floor glazing on the southern elevation. Given the limited privacy provided by the beech hedge at certain times of the year, in requiring the retention of this hedge, Condition Nos. 1 and 4 fail to adequately address such overlooking. As such, in complying with these conditions, the approved dwelling would negatively impact on the living conditions of the neighbouring residents.
7. Accordingly, it is reasonable and necessary to replace these conditions with wording that would allow for the planting of a more appropriate hedge to ensure the privacy of the residents of Applegarth is not unduly impacted. Furthermore, until such time as the current hedge is replaced, it is reasonable and necessary to retain the requirement that it would not be reduced in height unless approved by the Council for the same reason.
8. Revised plans have been submitted which have been approved by the Council. These demonstrate the height of the proposed hedge and its position adjacent to the fence separating the site from Applegarth. However, there is limited further information on the specifics of this new hedge. I acknowledge that the appellant refers to an evergreen laurel in its submissions, to which the Council's Tree Officer has no objection. Nevertheless, the submitted plans provide no such details on the species or density of the proposed hedge.
9. As such, in the interests of certainty, it is also reasonable and necessary to require the approval of the Council to the precise specification of the new hedge. This is to ensure that it is of a density, scale and type that provides adequate protection to the living conditions of the residents of Applegarth, with regards to privacy. Such a condition has been suggested by the Council, and

the appellant has had the opportunity to comment on this. While the appellant has raised concerns that it would result in delays and expense, I have no substantive evidence to demonstrate that this would be the case.

10. The appellant has referred to planning permissions granted within the area that have not required boundary treatments. However, from the information provided the layout and relationship of these schemes relative to neighbouring dwellings differs from that of the proposal. In any event, each application is decided on its own site specific merits.
11. For the reasons given, varying Conditions No. 1 and 4 of reserved matters approval SL/2019/0735 would not result in significant adverse effects on the living conditions of residents of Applegarth with regard to privacy. It would have a positive effect in this regard, such that the conditions should be varied.

Condition No. 2

12. Condition No. 2 attached to reserved matters approval SL/2019/0735 seeks to restrict permitted development (PD) rights at the site, with the Council stating that the application of such rights could cause significant adverse effects to the living conditions of the residents of Applegarth, with regard to outlook.
13. However, the Framework states that conditions should not be used to restrict permitted development rights unless there is a clear justification to do so, with Planning Practice Guidance (PPG) making it clear that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity, and should only be used in exceptional circumstances.
14. I accept that PD rights at the site could give rise to further built form in the proximity of Applegarth. However, the extent of such development would be limited by the criteria of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order). Although this may still allow for some sizeable development, I have not been provided with evidence that these rights are likely to be used to their maximum.
15. In any event, while the property at Applegarth sits near the location of the approved dwelling and is angled towards the site, screening is provided in the form of boundary fencing and hedging, which would be further addressed by the variation of Conditions No. 1 and 4. Accordingly, the impact of any PD at the site on the outlook of residents at Applegarth would be limited. Although such development may be visible in views from the rear amenity space or rear habitable windows of Applegarth when looking towards the site, the main outlook from these areas towards the open fields to the west would remain largely unchanged such that the residents' enjoyment of these spaces would not be unduly impacted.
16. The fact that the site is located within proximity of other residential properties with potential for further development is common for many other dwellings and curtilages, including within the immediate area. I do not therefore consider that the position of the appeal site relative to Applegarth is in itself an exceptional circumstance in this case, and no other such circumstances have been raised by the Council. Therefore, in the light of the provisions of the Framework and PPG regarding imposition of conditions restricting the future use of permitted

development rights, there are no exceptional circumstances to justify the removal of permitted development rights at the appeal site.

17. For the reasons given, Condition No. 2 of reserved matters approval SL/2019/0735 is neither reasonable nor necessary with regards to protecting the living conditions of neighbouring residents of Applegarth, with regards to outlook. I conclude that it should be removed.

Other Matters

18. The residents of Applegarth have highlighted uncertainty regarding the property boundary and the risk of encroachment from the hedge, a replacement hedge or its roots. They have also raised concerns regarding the maintenance of the hedge by the appellant. However, these are private matters between the parties that fall outside of the planning remit of this appeal. My attention has further been drawn to the fact that the appellant no longer lives at The Langdales, and that it is now a holiday let. However, this also has no implications on the planning merits of this appeal.

Conditions

19. The PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on reserved matters approval SL/2019/0735, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
20. Condition No. 1 of reserved matters approval SL/2019/0735 refers to a plan titled 'Principal Elevation and Internal Layout Revision 3'. This appears to be in error, with neither party having a record of a plan with this title. Plans were submitted in connection with the reserved matters application entitled 'Internal Layout - Revision 3' and 'Principal Elevations and Visuals - Revision 2', the latter of which has been updated for the purposes of this appeal and approved by the Council. I have amended the wording of Condition No. 1 accordingly.
21. The Council suggested a condition stating that the hedge shall not be removed during bird nesting season unless a suitable survey has been submitted to and approved by them. However, given that the timing of the removal of the hedge will be in accordance with a specification agreed by the Council, I do not deem this condition to be necessary. Similarly, while it has been suggested by interested parties that any removal or planting should be overseen by a qualified arboriculturist, as this will need to be done in accordance with a specification agreed by the Council this requirement is not necessary.

Conclusion

22. For the reasons given above, I conclude that the appeal should be allowed and the planning permission varied as set out in the formal decision.

C Rafferty

INSPECTOR

SCHEDULE 1 – CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site/ Block Plan Rev. 4 dated March 2022; Proposed Elevations Rev. 4 dated March 2022; and Principal elevations and Visuals Rev. 4 dated March 2022; and Internal Layout Rev. 3 dated 20 August 2020;
- 2) a) No development shall commence until samples and details of the materials to be used in the construction of the external surfaces of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority;

b) Development shall be carried out in accordance with the approved details of materials unless otherwise agreed in writing with the Local Planning Authority.
- 3) a) The hedge along the southern boundary of the site shall not be reduced in height unless written approval is given by the Local Planning Authority and shall not be removed until a full written specification of the replacement hedge has been submitted to and approved in writing by the Local Planning Authority. The specification shall include the quantity, size, species and positions or density of the plants, how they will be protected and the proposed time of planting.

b) All planting shall be undertaken in accordance with the agreed specification and the timetable contained therein. The replacement hedge shall thereafter be retained and maintained at a height of not less than 2 metres.
- 4) Notwithstanding the approved plans, the proposed access shall comprise a minimum width of 4.7 metres and there shall be provision for two car parking spaces and a turning area within the site in order for vehicles to enter and leave the site in forward gear.

END OF SCHEDULE