



Appeal Decision

Site visit made on 9 January 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/J3015/W/22/3299780

Land at 3 Swingate, Kimberley, Nottingham, Nottinghamshire NG16 2PG

- 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 JRD Design & Build Ltd against the decision of Broxtowe Borough Council.
 - The application Ref 20/00876/FUL, dated 16 December 2020, was refused by notice dated 15 March 2022.
 - The development proposed is to construct two detached houses with associated car parking, garages, access road and bin store.
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Decision

1. The appeal is allowed and planning permission is granted to construct two detached houses with associated car parking, garages, access road and bin store at Land at 3 Swingate, Nottingham, Nottinghamshire NG16 2PG, in accordance with the terms of the application, Ref 20/00876/FUL, dated 16 December 2020, and the plans submitted with it, subject to the conditions within the attached schedule.

Preliminary Matters

2. A previous proposal for four dwellings was dismissed at appeal. The Inspector found that the scheme would be out of keeping with the character and appearance of the area and overbearing to occupiers of 2 Angus Close. This decision is a material consideration that I shall take into account where relevant in this decision. Nonetheless, the dismissed scheme was for a greater number of dwellings and involved a different configuration of dwellings. As such, the proposal the subject of this appeal is materially different to that scheme.
3. During consideration of the application, the scheme was reduced from six bungalows to two dwellings and was subject to re-consultation. The Appellant has declared, under section E of the appeal form, that the description of development was agreed to be changed. As such, I have used this new description and taken the revised details into account, without causing prejudice to any party.
4. Amended plans¹ have been submitted as part of the appeal process. This corrects a minor drafting error associated with the side elevations of each dwelling. As these changes are limited, and have no material bearing on the main issues, I have accepted these without causing prejudice to any party.

¹ Proposed Floor Plans and Elevations: 940 003 rev M

Main Issues

5. The main issues are:

- The effect of the proposal on the character and appearance of the area, and
- the effect of the proposed dwellings on the living conditions of occupiers of 4 and 5 Angus Close (No's 4 and 5), with particular regard to outlook and access to sunlight.

Reasons

Character and appearance

6. Swingate predominantly consists of semi-detached and detached dwellings with a diverse range of styles. The local pattern of development includes cul-de-sac estates, within small pockets of housing, with Swingate acting as a main access route into the area. Residential plot sizes, and their respective gardens, are of a generally consistent size. The appeal dwelling is a semi-detached property of traditional design which includes a substantial rear garden. This dwelling accords with local development in terms of scale and position to the highway. It is therefore in keeping with the surrounding built form and makes a positive contribution to the character and appearance of the area.
7. The appeal site is a long irregular shape. It narrows alongside the existing dwelling and widens towards the rear. The proposed dwellings would be located within the middle of the site, along a cul-de-sac, having a negligible effect on the established streetscene. These would be detached, two-storey properties with pitched roofs. Their overall design would complement the traditional design of housing in the area. Furthermore, the arrangement and location of the dwellings would be in keeping with the established pattern of development, containing many cul-de-sacs, and where there is no clearly defined linear character.
8. The scheme proposes two dwellings within a comparatively large site. The plots would be similar in size to neighbouring residential development, with a comparable density of development. Accordingly, the proposal would accord with the scale and density of local housing and would not represent an over intensive form of development.
9. Consequently, the proposal would complement the character and appearance of the area. As such, with respect to matters of character and appearance, the proposal would accord with policy 10 of the Broxtowe Aligned Core Strategy (CS) and policy 17 of the Broxtowe Local Plan (LP) part two. These seek, among other matters, for development to reinforce valued local characteristics and integrate well with its surroundings.

Living conditions

10. The appeal site includes a gradient that increases upwards towards its rear. The rear elevations of houses of 1-6 Angus Close and 5 to 13 Swingate overlook the site. Furthermore, some dwellings along Clive Crescent, which are on substantially higher land, also overlook the site. Boundary treatment around the perimeter of the site consists of a combination of wooden fence panels of varying heights and chain link fencing alongside the public footpath to the south. On site boundary hedging and planting is limited. Consequently, the rear

windows of neighbouring dwellings overlook built form and neighbouring housing, resulting in a degree of intervisibility between private spaces.

11. The Council does not employ separation distance requirements. Consequently, assessments with respect to the effect of new development on neighbouring occupiers are made by planning judgement. The proposed dwellings include side windows. However, these would serve non-habitable rooms that could be required by condition to be obscurely glazed to prevent overlooking.
12. The dwelling of plot two would be at slightly higher land than some dwellings within Angus Close. The rear elevations of No's 4 and 5 would look toward the dwelling and single garage of plot two. The proposed dwelling would be sited beyond the end of the neighbour's garden, the boundary fence and the proposed driveway of this plot. The proposed garage would have a low eaves height, and low angle of roof, resulting in a limited effect on neighbouring views. The footprint of plot two would be aligned with the boundary which would place the dwelling at an angle to the rear elevations of No's 4 and 5, diminishing the overall visual effect of the proposal. Furthermore, the separation distance to the closest part of the proposed dwelling would be relatively generous. As a result, the proposed dwelling would not over-dominate the outlook from neighbouring dwellings.
13. Accordingly, whilst the proposed dwelling would alter the outlook from the rear elevations of No's 4 and 5, this change to their views would not result in material harm to their living conditions. Furthermore, for similar reasons whilst being located to the south of neighbouring dwellings, the proposal would not result in a substantive loss of sunlight due to the separation distance.
14. Consequently, the proposed development would result in an acceptable impact on the living conditions of occupiers of No's 4 and 5 in regard to outlook and sunlight. The proposal would therefore accord with CS policy 10 and LP policy 17. These policies seek, with respect to living conditions, for development to take into account the impact on the amenity of nearby occupiers and ensure the provision of a satisfactory degree of amenity for occupiers of neighbouring properties.

Other Matters

15. During my visit I noted that the site was largely grassed with small areas of shrub and tree planting providing limited habitat interest. As a result, the loss of the limited planted areas could be adequately addressed through the provision of new landscaping, providing new ecological habitat, that could be secured by condition.
16. The footpath to the south of the site, has been reported as a source of anti-social behaviour in the past. Although including streetlights, the footpath includes several turns which may dissuade some users from using the route, especially at night. Whilst the proposal would place a new boundary adjacent to the footpath, the scheme would also result in new overlooking opportunities. Consequently, the proposal would be likely to improve the safety of users of the footpath.
17. The moderately constrained location of the site could result in some temporary disturbance to adjacent neighbours from construction activity. Nonetheless, due to the limited scale of development any construction disturbance would be

- modest. Furthermore, it would be regulated by environmental legislation which would prevent it causing a substantive adverse impact on neighbouring occupier's living conditions.
18. A bin store area would be provided within the site adjacent to the access. The location has been accepted by the Council's Joint Waste Services Department and its collection arrangements can be specified in detail through the imposition of a suitable condition.
 19. The proposal would result in a small number of vehicle movements of future occupiers, travelling at low speeds along the access drive. Occasional larger delivery vehicles may need to attend the site, but such activity would be limited and infrequent. The modest scale of the proposal would be unlikely to result in significant vehicular disturbance to adjacent occupiers in terms of either noise, light spill or general disturbance.
 20. The dwellings of Clive Crescent are substantially higher than the site. Furthermore, other neighbouring properties have relatively long gardens. Consequently, occupiers of these dwellings would not be overlooked or experience an adverse effect to their outlook due to the noted separation distances.
 21. The dwelling of plot two would largely overlook the driveway and parking areas within the site. Views of the rear gardens of 1-4 Angus Close would be limited due to the oblique angle of view and would mostly only overlook the rear most parts of these gardens. Overlooking into neighbouring windows of Angus Close would be minimal due to the oblique angle of view and separation distance. Also, the front and rear elevations of the dwelling of plot one would have limited overlooking opportunities due to the separation distances and boundary and plant screening. Moreover, the separation distances found within the site would be comparable to those evident locally. Accordingly, this relationship would not result in a material loss of privacy to neighbouring occupiers through overlooking.
 22. The site is close to a school and opposite a bus stop. Interested parties identify that the local roads can become congested at busy period. However, these are relatively typical hazards and effects of an urban area. Swingate is a relatively straight highway with a 30mph speed restriction. The footway is of sufficient width to ensure that a motorist would have clear visibility in both directions when leaving the site. The scheme would include sufficient on-site parking provision to meet the needs of occupiers of both the proposed and retained dwellings and would be unlikely to create on street parking. Furthermore, this minimal increase of traffic would be unlikely to affect highway safety, which must be considered in isolation of any existing congestion, and I note that the Highway Authority takes a similar view.
 23. The existing dwelling would be retained. It would include a rear garden of reasonable size and the provision of two parking spaces. Interested parties have raised concerns that this property may be converted into flats in the future. However, such a use is not proposed within this proposal and would be subject to separate planning permission.

Conditions

24. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance. I shall take the Council's suggested conditions into consideration and impose these with some amendments and adjustments for clarity.
25. Conditions are necessary for materials and landscaping details to be agreed in the interests of the character and appearance of the area. It is also necessary for a condition to be imposed to require the side windows to be obscurely glazed to prevent overlooking towards neighbouring properties. Highway works to form the access and for all hardstanding areas to be laid out, prior to the commencement of the use, are required in the interests of highway safety.
26. The Council's Environmental Services Team has identified that refuse collection operatives will not enter private land to collect bins. As such these would need to be presented at the edge of the adopted highway for emptying. The location of the bin storage area has been agreed with the Council, but the method of its use is undefined. A condition requiring details of the waste and recycling collection strategy is required due to the distance of the dwellings from the highway and to ensure the bin storage area would be used correctly.
27. A drainage condition was sought by Severn Trent Water. However, the requirements for details of surface water and foul sewage can be suitably addressed through the building control process. Such a requirement should not be duplicated by a planning decision in this case due to the limited scale of the development.

Planning balance and conclusion

28. The National Planning Policy Framework seeks to significantly boost the supply of housing. Whilst the Council appears to be able to demonstrate a 5 year housing land supply this is not a cap that would prevent future suitable and appropriate housing development to come forward. Furthermore, being located close to Kimberley town centre, the site would provide future occupiers with easy access to a range of goods and services.
29. The proposal would accord with the development plan, when taken as a whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission is granted subject to the attached conditions.

Ben Plenty

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the Site Location Plan ref: 940 001 site layout, roof plan 940 004 Rev K and proposed floor plans and elevations 940 003 Rev M.
- 3) No above ground works shall commence until full details of the colour, finish and texture of external facing materials has been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed only in accordance with the approved details.
- 4) No above ground works shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include: (a) numbers, types, sizes and positions of proposed trees and shrubs; (b) planting, seeding/turfing of other soft landscape areas; (c) details of site boundary treatments; (d) elevations of bin store; and (e) a timetable for implementation of the scheme.

The landscaping scheme shall be carried out in accordance with the approved timetable. If any trees or plants, which, within a period of 5 years, die, are removed or have become seriously damaged or diseased, they shall be replaced in the next planting season with ones of similar size and species to the satisfaction of the Local Planning Authority.

- 5) The first-floor side facing windows of both approved dwellings shall be obscurely glazed to Pilkington Level 4 and non-opening to 1.7m above the finished floor level and shall be retained as such for the lifetime of the development.
- 6) No part of the dwellings hereby approved shall be first occupied until an arrangement with a management company has been established, setting out details for the private collection of household waste and recycling for the site. These details shall be submitted to the Local Planning Authority for approval and implemented for the duration of the use of the site for residential purposes.
- 7) The dwellings hereby approved, shall not be first occupied until the access has been widened and thereafter completed to a standard in accordance with drawing 004 Rev K; the dropped vehicular footway crossing has been widened and made available for use; all driveways and parking areas have been surfaced in a hard, bound material (not loose aggregate) and designed to prevent the unregulated discharge of surface water onto the public highway; visibility splays are provided in accordance with drawing 008 Rev J and retained for the lifetime of the development; and the bin store as shown on drawing 004 Rev K is constructed and available for use. The surfaced drives, parking areas and dropped vehicular crossings shall then be maintained in such form for the lifetime of the development.

End of conditions