



Appeal Decision

Site visit made on 22 November 2022

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/B2002/W/22/3301257

83 Brigsley Road, Waltham DN37 0LB

- 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 M Short against the decision of North East Lincolnshire Council.
 - The application Ref DM/0536/20/FUL, dated 3 July 2020, was refused by notice dated 8 April 2022.
 - The development proposed is erect new dwelling with integral garage and including access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Comments from Natural England were sought regarding protected species issues. These were sent to the parties for comment and I have taken these into account when considering this appeal.

Main Issues

3. The main issues are the effect of the proposed development on:
 - protected species;
 - the character and appearance of the area; and
 - the living conditions of neighbouring residents at 83 Brigsley Road with particular regard to outlook, sunlight, daylight, privacy, noise and disturbance, and 85 Brigsley Road with regard to privacy.

Reasons

Protected species

4. A preliminary ecological appraisal (PEA) was submitted during the application. This identified the site as having the potential to form terrestrial habitat for great crested newts (GCN), a European Protected Species¹. The PEA recommended precautionary working practices following a risk assessment based on the assumption that the site was 100m-250m from any breeding pond.

¹ Designated by SI 2017/1012 The Conservation of Habitats and Species Regulations 2017 (as amended)

5. Subsequently, it was reported that GCN had been found in a pond in the paddock of No 85. The appellant has confirmed it has not been possible to carry out environmental DNA testing which could confirm if newts were present. However, the PEA has not been updated to consider the effect of the presence of newts less than 100m from the site.
6. From the evidence before me, I cannot be certain that the extent to which GCN may be affected has been established and that the proposed precautionary working measures are sufficient. The appellant has suggested that this matter could be addressed through the submission of further information. However, the *Procedural Guide: Planning appeals – England* is clear at Annex B that “new evidence will only be exceptionally accepted where it is clear that it would not have been possible for the party to have provided the evidence when they sent us their full statement of case”. There is nothing before me setting out that was the case.
7. The appellant has made the alternate suggestion that a condition could be used to secure further mitigation. However, I am mindful of the advice in Circular 06/2005² at paragraph 99 that, with regard to species protected by law, “It is essential that the presence or otherwise, and the extent that they may be affected by the proposed development, is established before the planning permission is granted...”. It therefore would not be appropriate for mitigation measures to be secured by condition, as I do not have these facts before me.
8. I therefore cannot conclude that the proposed development would not have an adverse effect on protected species contrary to North East Lincolnshire Local Plan 2018 (NELLP) Policy 41 which requires appropriate mitigation measures where biodiversity may be harmed by development.

Character and appearance

9. The appeal site is a narrow but deep plot located between two dwellings on Brigsley Road. The site is subject to a Tree Preservation Order (TPO) which protects all trees. While there is some variation in plot size and the position of dwellings relative to the road in the surrounding area, plots are typically spacious, and the dwellings sited towards the front of the plot.
10. It is proposed to position the dwelling such that it would be located to the rear of the neighbouring properties. It would extend for much of the width of the narrow plot. Taken together, these would result in the dwelling appearing as a discordant, cramped feature, given the wider plots and similarity of relationship to the road of the immediate neighbours. The proposed height, scale and finish of the proposed dwelling and the overall size of the plot do not lead me to a different conclusion.
11. I observed the recently approved and constructed dwelling sited between 79 Brigsley Road and No 83. While this dwelling is also sited much further into the plot than its neighbours and extends for much of the width of the site, its overall siting appears more spacious due to the position of No 79 away from their shared boundary.
12. The proposal would result in the loss of protected trees. Trees, landscaping and grassed verges are prominent features, giving the area a verdant appearance.

² ODPM Circular 06/2005 Biodiversity and geological conservation – statutory obligations and their impact within the planning system

However, more detailed landscaping could be secured by condition which would mitigate for the harm that would arise as a result of the loss of the trees. A condition could also be imposed requiring protective measures to the retained trees both within the site and within the neighbouring properties to protect them during construction.

13. The Council has not raised any objection to the proposed design of the dwelling. Given the variety of styles of housing in the area I observed at my site visit, I have no reason to disagree.
14. I observed on my site visit the large scale residential development further along Brigsley Road. However, given the distance from the appeal site and the nature of the development, it does not change the character of the appeal site and is not determinative as to the acceptability of the appeal proposal.
15. The appeal proposal would appear incongruous in the street scene. This would not be mitigated by any of the factors I have identified above. I therefore conclude that the proposed development would harm the character and appearance of the area. It would be contrary to NELLP Policy 5 which requires regard to be had to the scale of development and NELLP Policy 22 which requires the design of development to consider the context of the site.

Living conditions

16. The proposed dwelling would be set back in the site to the rear of the neighbouring properties. While part of the garage has a pitched roof, this is limited in length and hipped away from the boundary of No 83. The remainder of the extension along this boundary would be single storey and have a flat roof. The remainder of the dwelling is set away from the boundary, and the pitched roof would slope away from the boundary. While this would change the outlook from the rear garden of No 83, it would not result in significant harm given the position of the proposed dwelling, limited height of the flat roof single storey projection and size of the rear gardens. Although there would be limited loss of sunlight, daylight and associated shadowing as a result of the design of the proposed dwelling, the change would not be significant.
17. There are a number of windows in the side elevation of No 83 which face onto the appeal site and serve habitable rooms. The vehicular access to the site would be in proximity to this boundary. The use of the access would give rise to additional noise and disturbance to those rooms. However, it is likely the number of vehicle movements associated with the dwelling would be limited and of short duration as vehicles enter or exit the site.
18. The first floor bedroom window to the front elevation of the proposed dwelling would provide some views towards the neighbouring properties. However, given the oblique angles involved, such views would be limited and would not result in a significant loss of privacy to either property.
19. I therefore conclude that the proposed development would not have an adverse effect on the living conditions of neighbouring residents at No 83 with particular regard to outlook, sunlight, daylight, privacy, noise and disturbance, and No 85 with regard to privacy. It would be in accordance with NELLP Policy 5 which requires development to have regard to the impact upon neighbouring land uses including with regard to noise and disturbance, and NELLP Policy 22 which requires the design of development to consider the context of the site.

Other Matters

20. The Council has not raised any concerns with the density of the development in and of itself, and I saw nothing at my site visit to lead me to a different conclusion.
21. There is no dispute that drainage could be addressed by condition.
22. The Planning Committee are entitled to reach a different conclusion to that of its officers provided valid planning reasons are provided. Matters relating to unauthorised works to trees subject to a TPO are not before me as part of this appeal.

Planning Balance

23. The Council has confirmed that it cannot demonstrate a five year supply of deliverable housing land and states the current position is 4.2 years. Paragraph 11d of the Framework is therefore engaged.
24. NELLP Policies 5, 22 and 41 are consistent with the Framework in the importance they place on high quality design that has considered the site's context and biodiversity. Taken together, and despite my finding that there would be no harm to the living conditions of neighbouring residents, the adverse effects of the development are significant.
25. The proposed development would deliver an additional windfall, infill dwelling in an appropriate location with good access to services and facilities. However, this would only make a small contribution to the shortfall and as such there would only be a limited benefit from this provision. There would be the associated economic benefits of development from construction and during occupation. However, this would also be limited due to the small scale of the proposal.
26. Accordingly, I find that the adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal therefore does not benefit from the presumption in favour of sustainable development.

Conclusion

27. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the Framework, which indicate that a decision should be taken other than in accordance with the development plan.
28. Therefore for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR