



Appeal Decision

Site visit made on 1 March 2023

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/A1015/W/22/3307796

Land adjacent Walton Walk / Boythorpe Avenue, Boythorpe, Chesterfield S40 2QE

- 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 Ms Claire Hancock (RTH Projects) against the decision of Chesterfield Borough Council.
 - The application Ref CHE/21/00171/FUL, dated 3 March 2021, was refused by notice dated 31 August 2022.
 - The development proposed is one pair new build semi-detached dwellinghouses.
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Decision

1. The appeal is allowed and planning permission is granted for one pair new build semi-detached dwellings at Land adjacent Walton Walk / Boythorpe Avenue, Boythorpe, Chesterfield S40 2QE in accordance with the terms of the application Ref CHE/21/00171/FUL, dated 3 March 2021 subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Ms Claire Hancock (RTH Projects) against Chesterfield Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the proposal on (i) the character and appearance of the area, and (ii) highway safety.

Reasons

Character and appearance

4. The appeal site is situated in a predominantly residential area, typified by properties of varying styles that are generally set back from the highway behind garden and parking areas. The topography in the area varies such that many of the buildings are set at higher or lower levels. These factors, as well as established planting and trees within garden areas, contributes to the pleasant, verdant character of the area.
5. The proposed dwellings would appear as single storey buildings in views from the front along Boythorpe Avenue. This would differ from the predominantly two storey properties in the area, but I was able to see a single storey dwelling to the east of the site. Although there are properties with distinct styles to either side of Boythorpe Avenue, the appeal site is in a corner location, and the

proposed dwellings would be set away, closer to Boythorpe Avenue than the two storey buildings along Riber Terrace. The short terrace rows, on the opposite side of Boythorpe Avenue, are also visually separate from the appeal site. I do not therefore consider the scale of the proposal in this context would harm the character of the area, particularly given the heights that buildings appear at vary with topography.

6. Reference has been made to the buildings being large compared to the site. The dwellings would appear as single storey structures from the front and would only extend across part of the width of the plot to Boythorpe Avenue. The proposed properties would be set back from the road, behind garden and parking areas, with further garden areas to the side and rear. I do not therefore consider the proposal would be overly large for the site.
7. I therefore conclude that the proposed development would not have an unacceptable adverse impact on the character and appearance of the area. As such, it would not conflict with Policy CLP20 of the Chesterfield Borough Local Plan (Local Plan), which seeks, amongst other matters, good design that positively contributes to the distinctive character of the borough. It would also not be contrary to the National Planning Policy Framework (Framework), which seeks at paragraph 130 for development to be sympathetic to local character.

Highway safety

8. The proposed dwellings would each be served by 2 parking spaces each off Boythorpe Avenue. Although these spaces would be located close to the junction of Boythorpe Avenue with Central Avenue, and would require vehicles to undertake reversing manoeuvres, this is not an unusual arrangement in the area. I was able to see other driveways in the vicinity of the appeal site, including one on the opposite side of Boythorpe Avenue, close to the same junction with Central Avenue. Although reference has been made to on-street parking, given that Boythorpe Avenue is lightly trafficked and the likelihood of conflict with other road users is low, I do not consider that the proposed parking arrangements would give rise to an unacceptable road safety risk. The highway authority also raised no objection to the scheme.
9. I therefore conclude that the proposed development would not have a harmful effect on highway safety. It would therefore not be contrary to Policies CLP20 or CLP22 of the Local Plan, which seek, amongst other matters, the provision of adequate and safe vehicle access and parking. It would also not be contrary to Paragraph 111 of the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

10. A variety of concerns have been raised in relation to privacy impacts arising from the proposed development, including to the garden areas of neighbouring properties. The rear of the proposed dwellings would not however directly face the properties along Riber Terrace but have an off-set relationship. There would be rear facing windows on the upper level of the dwellings, but these would either be obscure glazed or high level windows and non-opening. The proposal would have large glazed openings at lower ground floor level, but any direct overlooking can be mitigated with appropriate boundary treatment. The

design of the side-facing windows would also incorporate blank panels. I have considered other concerns relating to privacy, but the effect on living conditions did not form part of the Council's refusal, and I also do not consider that domestic activities, such as window cleaning would have any harmful effects, given the siting and form of development proposed. For these reasons, I do not consider there would be any unacceptable privacy impacts arising, irrespective of any screening offered by trees, including to the garden areas of neighbouring properties.

11. Despite the difference in levels, given the separation with properties on Riber Terrace, I do not consider there would be a detrimental impact by way of overbearing impact or loss of sunlight. A suitable height screen to the parking area would prevent undue light spillage from car headlights and this is a matter that can be addressed by condition. Concerns have been raised on noise and dust, but construction activity would be for a limited period and the timing of such activities can be addressed by condition.
12. Reference has been made in third party representations to an alternative bungalow development on the appeal site, but I am required to determine the appeal before me on its own merits. Concerns have been raised relating to the accuracy of plans. Although they do not show the conservatory on a neighbouring dwelling or the correct position of a boundary between two neighbouring properties, I was able to see the appeal site and its relationship with surrounding properties at the time of my visit and have considered the appeal accordingly.
13. I have taken into account all other matters raised including reference to the condition of the site, ground conditions and reference to boundary trees, but none of these matters would outweigh my conclusions on the main issues.

Conditions

14. I have considered the suggested conditions, having regard to the six tests set out in the Framework. For the sake of clarity, conciseness and enforceability, I have amended the wording of some of the suggested conditions as appropriate.
15. I have attached a materials condition in the interests of ensuring the development's acceptable appearance in order to safeguard the area's character and appearance, including requiring hard landscaping details.
16. Conditions are necessary in relation to contamination and coal mining to address such risks. Given the change in levels, a condition requiring details of works and measures to secure the stability of the highway is required, as is a condition relation to soakaways, to ensure appropriate drainage of the site. It is essential for these conditions to be pre-commencement conditions to ensure there are no adverse effects arising on human health, highway safety and flood prevention.
17. For highway safety reasons, I have imposed conditions relating to construction operations on site, to ensure the provision of accesses with adequate visibility and levels, and the provision of vehicular parking. A condition is also necessary for the same highway safety reasons to ensure that no fences, gates, walls or other means of enclosure are erected along the highway frontage.
18. Conditions are required to control water usage to ensure efficient use of resources and for the provision of a scheme for enhancements in relation to

biodiversity, as well as details of any external lighting to ensure the implications for biodiversity are considered. A further condition requiring the development to be completed in accordance with the submitted ecological report is necessary for the protection of habitat and wildlife.

19. Given the location of the site in a predominantly residential area, a condition limiting the hours of construction, demolition and other site operations is necessary in the interests of living conditions. A condition relating to a number of windows being obscured or having blank panels, and being non-opening is required to prevent harm to living conditions of surrounding residential occupiers. For this same reason, and to ensure the development's acceptable appearance, details of all the boundary treatment and that of the retaining wall to a height of 1m above the parking area are required.
20. Given the presence of nearby trees, a condition requiring protection measures is necessary in the interests of the character and appearance of the area, and for foul and surface water to be on separate systems to ensure the adequate drainage of the site. The provision of a condition requiring Electric Vehicle Charging Points for each proposed dwelling is necessary to enable the use of electric vehicles and reduce emissions.

Conclusion

21. The proposed development would accord with the development plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this. I conclude that the appeal is allowed.

F Rafiq

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No development above floor slab level shall take place until details and samples of all proposed external facing materials, including all hard landscaping materials, have been submitted to and approved in writing by the LPA. Development shall be carried out in accordance with the approved details/samples.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site location plan 20_93 PL_01
 - Proposed Site plan 20_93 PL_12 Rev C
 - Proposed Site plan 20_93 PL_03 Rev C
 - Proposed Typical site sections 20_93 PL_10 Rev D
 - Proposed Finishes schedule 20_93 PL_09 Rev F
 - Proposed Elevations 20_93 PL_108 Rev G
 - Proposed Roof plan 20_93 PL_07 Rev F
 - Proposed Ground floor plan 20_93 PL_06 Rev F
 - Proposed Lower ground floor plan 20_93 PL_05 Rev D
 - Proposed Floor plans general arrangement 20_93 PL_04 Rev G
- 4) No development shall commence until:
 - a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past coal mining activity; and
 - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance. Prior to the first occupation of the development, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the Local Planning Authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been

- previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to and approved in writing by the Local Planning Authority before the development is first occupied.
- 6) No development shall commence until details of any works and measures adjacent to Boythorpe Avenue to be taken to secure the stability of the highway have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
 - 7) No development shall commence until infiltration tests of the subsoils have been carried out and sizing calculations submitted to the Local Planning Authority for approval in writing, to ensure that soakaways are suitable for use at this site. The soakaways should be designed in accordance with BRE Digest 365 to ensure that no flooding occurs during a 30-year storm, as a minimum. Development shall be carried out in accordance with the approved details.
 - 8) At the first commencement of development on site (excluding demolition/ site clearance), space shall be provided within the site curtilage for storage of plant and materials, site accommodation, loading and unloading of goods vehicles, parking and manoeuvring of site operatives and visitors vehicles, laid out and constructed and maintained throughout the contract period free from any impediment to its designated use.
 - 9) Prior to the first commencement of development on site (excluding demolition/ site clearance and /works as part of condition 6), new vehicular and pedestrian accesses shall be formed to Boythorpe Avenue and provided with visibility sightlines extending from a point 2.4 metres from the carriageway edge, measured along the centreline of the access to the extremities of the site frontages abutting the highway in both directions. The area in advance of the visibility sightlines shall be retained throughout the life of the development free of any object greater than 1m in height (0.6m in the case of vegetation) relative to the adjoining nearside carriageway level.
 - 10) The development hereby approved shall not be occupied until parking spaces has been provided within the site for the parking of residents vehicles (each space measuring a minimum of 2.4m x 5m), located, designed, laid out, constructed and maintained throughout the life of the development free from any impediment to its designated use.
 - 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no fences, gates, walls or other means of enclosure shall be erected along the highway frontage of any dwelling without the prior written approval of the Local Planning Authority upon an application submitted to it.
 - 12) The proposed access driveways to Boythorpe Avenue shall be no steeper than 1:15 for the first 5m from nearside highway boundary and 1:12 thereafter.
 - 13) Prior to the development hereby permitted commencing above slab level, a scheme (including a programme of implementation and maintenance) to demonstrate biodiversity enhancement through the development; including the provision of bird and boxes and a detailed landscaping

scheme for the site, shall have been submitted to and approved in writing by the Local Planning Authority. The enhancement measures shall be implemented, retained and maintained thereafter in accordance with the scheme and programme so approved.

- 14) No dwelling hereby approved shall be first occupied until the optional requirement for water consumption (110 litres use per person per day) in Part G of the Building Regulations has been complied with for that dwelling.
- 15) A residential vehicle charging point shall be provided for each dwelling hereby approved with an IP65 rated domestic 13amp socket, directly wired to the consumer unit with 32 amp cable to an appropriate RCD. The socket shall be located where it can later be changed to a 32amp EVCP. Alternative provision to this specification must be submitted to and approved in writing, by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the stated criteria prior to occupation and shall be maintained for the life of the approved development.
- 16) No construction or demolition works, movement of construction traffic, or deliveries to and from the site, shall occur other than between 0800 and 1800 hours Monday-Friday, and 0800 and 1300 hours on Saturdays, and at no time on Sundays or Public Holidays.
- 17) Works on site shall be completed in accordance with the recommendations of the submitted ecological report dated 07.06.2021.
- 18) Prior to any external lighting installation, a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority to ensure that wildlife implications are fully taken into account (including the need for reduced or no lighting in the more sensitive locations and directions). The agreed lighting scheme shall be fully installed in accordance with the approved scheme prior to first occupation of the development hereby approved.
- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any statutory instrument amending, revoking and/or replacing that Order;
 - the side oriel windows as approved shall retain the blanked panel to the north facing side of the windows
 - the ground floor bathroom windows to the rear elevation shall be and remain obscured glazed to Pilkington level 3 or above
 - the ground floor bedroom windows to the rear elevation shall be and remain non-opening high level windows
 - and no other windows or roof lights shall be installed within the rear or side elevations or rear roof slope of any dwelling hereby approved.

All such works shall require the formal written permission of the Local Planning Authority on an application made to it.

- 20) Notwithstanding the submitted details, prior to works progressing above slab level a detailed scheme of all boundary treatments for the site, as well as the retaining walls around the bin stores, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the retaining wall having a brick element to 1m in height above the parking area with railing above. The agreed works shall be completed on site prior to first occupation of the approved development and shall be retained thereafter.

- 21) The site shall be developed using separate systems of foul and surface water drainage.
- 22) No materials or machinery shall be brought onto the site, until a 2 metre high fence of Weldmesh securely attached to scaffolding poles inserted into the ground has been erected in a continuous length, one metre beyond the crown spread of the trees to be retained (or such other fencing line as is agreed in writing with the Local Planning Authority). The fencing must remain throughout the period of construction and no materials or equipment shall be stored, no rubbish dumped, no fires lit or any excavation or changes in level take place within the fenced area.

End of Conditions