



Appeal Decision

Site visit made on 18 July 2023

by J Symmons BSc (Hons) CEng MICET

an Inspector appointed by the Secretary of State

Decision date: 19 September 2023

Appeal Ref: APP/E2001/W/23/3315093

Land North of Woodcock Road, Flamborough YO15 1LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Valant Homes against the decision of East Riding of Yorkshire Council.
- The application Ref 21/02387/VAR, dated 21 June 2021, was refused by notice dated 22 July 2022.
- The application sought planning permission for 'Erection of 52 dwellings (including 10 Affordable Dwellings) and associated infrastructure following Outline Planning Permission 16/03307/OUT (Appearance, Landscaping, Layout and Scale to be considered)' without complying with conditions attached to planning permission Ref 19/04297/REM, dated 25 January 2021.
- The conditions in dispute are Nos 1 and 2 which state that:
No 1: *'The development hereby permitted shall be carried out in accordance with the following approved plans:
1592-100 Rev A - Location Plan - received 13th January 2020; 1592-101 Rev N - Proposed Site Plan (excluding levels and streetscene Plans) - received 5th August 2020; 1592-102 Rev C - House Type Details AA, BB & Garage Details - received 30th March 2020; 1592-103 Rev A - House Type Details C, D-D, D & Single Garage Details - received 14th January 2020; 1592-104 Rev A - House Type Details E-E, F-F, J & Double Garage Details - received 13th January 2020; 1592-105 Rev A - House Type Details E-F, F-E (Handed) & G - received 13th January 2020; 1592-106 Rev A - House Type Details G (Handed), H and J (Handed) - received 14th January 2020; 1592-107 Rev A - House Type Details K, Triple and Double Garages (Back to Back) - received 13th January 2020; 1592-108 - Existing Survey Plan - received 14th January 2020; 1592-109 Rev A - Drainage Detail and Vehicle Tracking - received 13th January 2020; 1592-110 Rev A - Existing Site Survey - received 14th January 2020; 19420-DR-C-0100 P5 - Drainage Strategy Plan - received 5th August 2020; 19420-DR-C-0104P1 - Adopted Drainage Details - received 16th March 2020; 19420-DR-C-0800 Rev B - Drainage S38 Contours - received 5th August 2020; 19420-DR-C-0801 Rev A - Drainage-S38 Horizontal Alignments and Setting Out - received 18th December 2019; and 19420-DR-C-0802 Rev B - Drainage-S38 Vertical Alignments - received 5th August 2020.'*
No 2: *'The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those specified on approved drawing nos. 1592-102 Rev C, 1592-103 Rev A, 1592-104 Rev A, 1592-105 Rev A, 1592-106 Rev A and 1592-107 Rev A.'*
- The reasons given for the conditions are:
No 1: *'This condition is imposed in accordance with policy ENV1 of the East Riding Local Plan and for the avoidance of doubt and to ensure that the development hereby permitted is carried out in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.'*
No 2: *'This condition is imposed in accordance with policies ENV1 and ENV2 of the East Riding Local Plan and because if the external surfaces of the development were to*

consist of materials, which did not match the existing building, the development would detract from the appearance of the area.'

Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the planning application stage, in response to consultation with the Council, a number of application drawings were revised and submitted. These drawings are listed as part of the appeal. The Council have not raised any concerns regarding consideration of these drawings, and I have considered these in the appeal.
3. The appellant also has submitted a revised proposed site plan, Drawing 1639-101 revision Ja. This revision details as-built positions of the single garage on plot 10 and the houses on plots 13 and 14. The appellant advises that the as-built positions result in the single storey garage being moved towards the rear boundary and the houses on plots 13 and 14 moved around 0.9m and 0.5m respectively. The Council does not dispute the extent of the repositioning detailed and notes that this was not shown on the application drawings. The changes are relatively limited in nature and the parties have had the opportunity to provide comments on them. Having regard to the Wheatcroft principles, I am satisfied that there would be no risk of prejudice if I take this information into account. I have, therefore, included consideration of this material in my determination of the appeal.
4. During my visit I noted that construction of the development had commenced. In this regard plots 5, 8 and 9 are near to completion and Plots 13 and 14 are part constructed above the ground floor slab level. As such I have considered this appeal as retrospective and considered it in relation to the drawings submitted.
5. The National Planning Policy Framework (the Framework) dated July 2021 was revised in September 2023. The 2023 revisions do not have any relevance to this appeal and I have therefore not consulted the parties on this change. I have had regard to the current Framework in my determination of this appeal.

Background and Main Issue

6. The appeal site consists of an approximate two-hectare area of land extending to the north of Woodcock Road adjacent to the junction with Craikwells. It extends directly to the rear boundary with the existing houses on Woodcock Road. These existing houses are a mix of detached and semi-detached two storey and bungalow properties which have various size and lengths of rear gardens. The houses also have a variety of rear single storey extensions.
7. In 2017 outline planning permission, LPA Ref. 16/03307/OUT, was approved for the appeal site to be used for residential development. In 2021 a reserved matters planning permission, LPA Ref. 19/04297/REM, for 52 dwellings and associated infrastructure was approved subject to conditions and a planning obligation.
8. The appellant has sought, through section 73 of the Town and Country Planning Act 1990 (s73), to change some of the layout, materials, house types,

proposed ground/finished floor levels and ridge heights of the plots from those shown on the reserved matters drawings. Amongst these changes, plots 5, 8, 9, 13 and 14 which are located to the rear of the existing properties on Woodcock Road had their house type changed, accommodation in the roof space added and their levels and ridge heights increased.

9. While the Council noted a variety of issues with the proposed development changes, it was the specific changes to plots 5, 8, 9, 13 and 14 which were identified in the reason for refusal. The Council raised these plot changes as causing an overdominance, overlooking and have an overbearing effect on the residents of the neighbouring properties on Woodcock Road.
10. The terms 'overdominance', 'overlooking' and 'overbearing' are not defined in detail in the Council's reason for refusal. However, it is clear within the Committee meeting minutes and the Council's appeal statement that it is concerned about the potential impacts from the changes on the living conditions of the existing residents on Woodcock Road with respect to outlook and overlooking.
11. Consequently, the main issue is whether the changes to plots 5, 8, 9, 13 and 14 will affect the living conditions of the residents of the neighbouring properties along Woodcock Road with respect to outlook and privacy.

Reasons

12. The development has reserved matters approval and the changes completed require to be considered within the context of these permitted details.
13. Through the approval of the discharge of a number of outline planning conditions, LPA Ref. 21/30380/CONDET, the proposed finished floor levels for the houses on the plots were shown on Drawing 19420-DC-C-0100 revision P5.
14. The appellant contends that subsequent revisions of Drawing 19420-DC-C-0100 which amongst other matters included changing the proposed ground/finished floor levels, were approved by the Council. However, from the evidence provided these relate to engineering drainage technical approval and drainage consent rather than constituting planning approval.
15. The appellant further advises that they submitted Drawing 19420-DC-C-0100 revision P12, which included changes to the finished floor levels, in discharging the outline planning conditions. However, while evidence is provided to show this drawing was submitted, no substantive evidence to demonstrate that the Council accepted or approved it has been presented. As noted above, the Council's approval notice for the discharge of the outline planning conditions only refers to Drawing 19420-DC-C-0100 revision P5.
16. Based on the above, the ground/finished floor levels which have planning permission are those detailed on Drawing 19420-DC-C-0100 revision P5.
17. In comparison with the approved levels drawing, the approved house type drawings and site survey information, the parties agree that the houses on plots 5, 8, 9, 13 and 14 are set at a higher level and have/will have higher ridge heights. The increases in finished floor levels are estimated to be 0.45m for plots 5, 8, 9 and 14 and 0.35m for plot 13. The increase in ridge height is estimated as 0.43m for plots 5 and 14, 0.14m for plots 8 and 9 and 0.45m for plot 13. These result in an estimated combined increase of 0.88m for plots 5

and 14, 0.59m for plots 8 and 9 and 0.8m for plot 13. On reviewing these increases, I see no reason to disagree with them.

18. The approved site plan for the development is detailed on Drawing 1592-101 revision N and the changes to this are detailed on Drawing 1639-101 revision Ja. The appellant has provided a number of distance and layout comparison site plans and sections¹ and a summary distance table, Table 1. These show the estimated rear separation approved between the existing properties on Woodcock Road and those which have been revised.
19. Even with the slight differences between the revised and approved schemes' separation, plots 5, 8 and 9 have longer gardens which provide reasonable separation to the boundary fence. In conjunction with the existing gardens, there is relatively good and even separation to the neighbouring houses on Woodcock Road. This garden separation is sufficient to prevent the combined higher plot levels and higher ridge heights causing an overbearing and dominant effect. Accordingly, these plots do not harm the neighbouring residents' outlook.
20. In contrast, plot 13 has a shorter garden length which positions it closer to the boundary. This creates an uneven garden separation with the existing neighbouring garden. While the revised and approved scheme's separations are similar, the closer positioning in conjunction with the estimated 0.8m combined higher level and increased ridge height, will result in the house being more dominating and overbearing to the neighbouring house on Woodcock Road. The high boundary fence with the trellis will do little to reduce this as a large part of the rear elevation of the house will still be visible and dominant. No evidence has been provided that the proposed boundary planting identified in the reserved matters would assist in mitigating the plot's dominant effect. The revised plot will harm the neighbouring residents' outlook.
21. In relation to plot 14, the separation to the existing neighbouring house on Woodcock Road is nominally increased compared to the approved scheme. However, the neighbouring house's garden is located close to the boundary and is small and short. As such the estimated 0.88m combined higher level and increased ridge height would significantly increase the dominating and overbearing effect on the neighbouring garden compared to the approved scheme. As with plot 13, the boundary fence with trellis will do little to reduce the dominant effect plot 14 has as a large part of the rear elevation will still be visible. Furthermore, no evidence that the reserved matters boundary planting would reduce the dominant effect of the plot is provided. The revised plot will harm the neighbouring residents' outlook.
22. It is further noted that the existing neighbouring single extension extends a significant way towards the boundary. While this is detailed as being a garage, from my site observations its appearance and alignment is more akin to a domestic extension. This extension has windows to its end elevation which faces plot 14 and the separation between these is relatively limited. Notwithstanding that the separation is not significantly changed from the approved scheme, the combined higher level and ridge height of the plot will also have a similar unacceptably dominating and overbearing effect as found on the garden.

¹ Appellant's Statement Appendices 8, 8a, 8c, 9a, 9b and 9d

23. Turning to overlooking, the increase in finished floor levels to plots 5, 8, 9, 13 and 14 compared to the approved scheme, estimated as being 0.45m or less, are not a significant increase. As the revised plots and existing neighbouring house separations are similar to the approved scheme and the boundary fence has been increased with the addition of the trellis, there will be little change to the ground and first floors in terms of overlooking and effect on privacy from that provided by the approved scheme.
24. While the addition of the accommodation in the roof space includes skylights, these are angled to the roof pitch and are positioned higher and further away from the neighbouring gardens and houses. The inclusion of the skylights would not result in unacceptable overlooking and loss of privacy of the neighbouring residents.
25. With respect to the acceptability of the separation provided, the appellant refers to the East Riding of Yorkshire Council's Design Guidance titled 'Design Guide for Home Extensions', LPA Ref: DSO/651. This document is undated and is specific to extensions and alteration to existing houses. It advises that it is only a guide and each application should be considered on its individual planning merits.
26. In relation to impacts on neighbouring properties, the guidance is more focused on maintaining privacy which I have not identified as a particular issue with the revised scheme. It provides little detail on the effect of dominance on rear neighbouring plots or where a level and height difference exist. It provides little justification to change my view that plots 13 and 14 will be unacceptably dominating and overbearing and will harm the neighbouring residents' outlook.
27. I appreciate that the appellant has no control over the existing houses and gardens. However, the revised scheme's design is required to ensure that the living conditions of existing residents are not unacceptably harmed.
28. While the changes in finished floor levels and ridge heights may in some cases be relatively small when considered individually, it is their combined effect on the outlook of the neighbouring residents that requires to be considered in terms of potential impact. I have assessed the appeal on this basis.
29. The appellant and Council advise that a separate planning application for a new proposal for the development which reduces the heights of the ridges and eaves of plots to the same level as shown on the reserved matters drawings has been approved. The appellant indicates that in effect this constitutes a 'fall-back' position. However, while full details of this proposed scheme have not been provided, it is indicated that it would reduce the height of plots 5, 8, 9, 13 and 14. As such, in all probability, the new proposal would have a less harmful impact on the existing neighbouring resident's outlook compared with this revised scheme. The fall-back therefore does not justify the harm I have identified.
30. In conclusion, the changes to plots 5, 8, and 9 will not harm the living conditions of the residents of the neighbouring properties along Woodcock Road in terms of outlook and plots 5, 8, 9, 13 and 14 will not harm privacy. However, plots 13 and 14 will harm outlook. Consequently, the changes will be contrary to Policy ENV1 of the East Riding Local Plan 2012-2029 Strategic Document 2016 and paragraph 130 of the Framework. These, amongst other matters, seek to support development which has regard to the amenity of

existing properties and creates places that have a high standard of amenity for existing users.

Other Matters

31. The Officer Report recommended approval of the amended houses and the Committee disagreed with this. The decision of planning permission is a matter of judgement on balancing adverse impacts and benefits. The Committee are entitled not to accept the professional advice of the Officer. I have considered comments from all parties in determining the appeal.
32. I noted that the plots were originally designed with ridge heights that would permit rooms in the roof and that the inclusion of the bedroom accommodation may have been potentially undertaken under permitted development rights. However, this does not change the harm to outlook I have found.
33. The section 73 appeal has been accompanied with a signed Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990. The Council has confirmed that the terms of the UU are agreed and the contributions and trigger points for those contributions are acceptable to it. However, as I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties.

Conclusion

34. For the above reasons, having regard to the development plan as a whole, and the approach in the Framework, I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR