



Appeal Decisions

Site visit made on 17 August 2023

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Appeal A Ref: APP/N4205/C/22/3304465

Land at 364 Tempest Road, Lostock, BOLTON, BL6 4HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Christine Wilkinson against an enforcement notice issued by Bolton Metropolitan Borough Council.
- The enforcement notice was issued on 12 July 2022.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 01659/17 granted on 19 October 2017.
- The development to which the permission relates is: Erection of two dwelling houses and alterations including part demolition of existing bungalow.
- The conditions in question are Nos 2, 5 and 24 which state that:
 - 2. Notwithstanding any description of materials in the application no above ground construction works shall take place until samples or full details of materials to be used externally on the building(s) have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. Only the materials so approved shall be used, in accordance with any terms of such approval.* Reason: To ensure the development reflects local distinctiveness and to comply with policy CG3 of Bolton's Core Strategy.
 - 5. No development shall be commenced until full details of existing and proposed ground levels within the site and on land adjoining the site by means of spot heights and cross-sections; proposed siting and finished floor levels of all buildings and structures, have been submitted to and approved by the Local Planning Authority. The development shall then be implemented in accordance with the approved level details.* Reason: To ensure the development safeguards the character and visual appearance of the locality and to safeguard the living conditions of nearby residents particularly with regard to privacy and outlook.
 - 24. The development hereby permitted shall be carried out in complete accordance with the following approved amended plans: Existing & Proposed Site Plans and Proposed Floor Plan for 354 drawing number 04 (undated); House 01- Proposed Site Plans and Proposed Floor Plans for 364 drawing number 04 (undated); House02- House 01- Proposed Site Plans and Proposed Floor Plans for 364 drawing number 04 (undated); Proposed Site Plan drawing number 04 (undated); Existing and Proposed Plans & Elevations of the Bungalow drawing number 05 (undated).* Reason: For the avoidance of doubt and in the interests of proper planning.
- The requirements of the notice are:
 - (1) Remove the uPVC materials from the side and rear elevations of the permitted rear extension (Extension 1 in the photographs attached to the notice) to the existing bungalow and finish in materials approved under planning permission 01659/17 and the details approved under condition 2 to that permission, reference 05686/19.
 - (2) Reinstate all floor levels in the two dwellings to the levels permitted under planning permission 01659/17 and the details approved under condition 5 to that permission, reference 05686/19.
 - (3) Remove the rear first floor extension (Extension 2 in the photographs attached to the notice) to the bungalow not permitted under planning permission 01659/17 set out in condition 24 to that permission as shown on the plan Existing and proposed plans and elevations of the Bungalow drawing number 05. Return this part of the bungalow to its state prior to the unlawful development as shown on the plan Existing and proposed

plans and elevations of the Bungalow drawing number 05, marked existing rear elevation.

(4) Remove the rear porch (Extension 3 in the photographs attached to the notice) to the bungalow not permitted under planning permission 01659/17 set out in condition 24 to that permission as shown on the plan Existing and proposed plans and elevations of the Bungalow drawing number 05.

(5) Remove the flat roof to the permitted first floor rear extension (Extension 1 in the photographs attached to the notice) and reinstate with the pitched roof in accordance with the plan Existing and proposed plans and elevations of the Bungalow drawing number 05. Approved under permission 01659/17.

- The period for compliance with the requirements is: 90 days
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Appeal B Ref: APP/N4205/W/22/3297481

364 Tempest Road, Lostock, Bolton, BL6 4HS

- 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 Mrs Christine Wilkinson against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 11165/21, dated 24 March 2021, was refused by notice dated 26 October 2021.
 - The development proposed is: Variation of conditions on approval 01659/17 (Amendments to 02 - Materials; 05 - Ground Levels; 11 - Landscaping; 24 - Levels, Parking Spaces, Gulley to Access Road, Telegraph Pole and Width of Access Road).
-

Appeal C Ref: APP/N4205/W/23/3318669

364 Tempest Road, Lostock, BOLTON, BL6 4HS

- 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 Mrs Christine Wilkinson against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 14459/22, dated 17 August 2022, was refused by notice dated 16 February 2023.
 - The development proposed is described as '2no. dwelling houses together with associated works to remove 2no. ground floor windows; remodel external garden levels and erect new 2m high boundary and screening fences.'
-

Decisions

1. It is directed that the enforcement notice be amended by:
 - the deletion in full of the following text from the requirements paragraph: '(4) Remove the rear porch (Extension 3 in the photographs attached to the notice) to the bungalow not permitted under planning permission 01659/17 set out in condition 24 to that permission as shown on the plan Existing and proposed plans and elevations of the Bungalow drawing number 05.'; and
 - The deletion of the text '90 days' from the period for compliance paragraph, and its replacement with the text: 'Six months.'
 2. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.
-

3. Appeal B is dismissed.
4. Appeal C is allowed and planning permission is granted for 2no. dwelling houses together with associated works to remove 2no. ground floor windows; remodel external garden levels and erect new 2m high boundary and screening fences at 364 Tempest Road, Lostock, Bolton BL6 4HS in accordance with the terms of the application Ref 14459/22, dated 17 August 2022, subject to the conditions set out in the schedule to this decision letter.

Preliminary Matters

5. I note the appellant's reference to the previous enforcement notice of February 2022 relating to No 364, and the fact that that notice set out lesser requirements than the notice that is the subject of this appeal. However, as this notice was withdrawn, it is not in force and, in effect, no longer exists. That being the case, I cannot take it into account in my determination of the appeals before me.
6. As 'retention' does not fall within the definition of development, I have removed this term from the description of the scheme that is the subject of Appeal C in the interests of clarity.

Appeal (a) on ground (a) and Appeal B

7. Ground (a) is that planning permission should be granted for what is alleged in the notice. As Appeal B relates to the same unauthorised development, I have dealt with Appeals A and B together so as to avoid unnecessary duplication.

Main Issues

8. The main issues are the effect of the development on:
 - the character and appearance of the surrounding area; and
 - the living conditions of the future residents of the new dwellings, and of neighbouring residents, with particular regard to privacy and overlooking.

Background

9. In 2017, planning permission, ref: 01659/17, was granted for two new detached dwellings on land to the rear of 364 Tempest Road. To allow access to the land behind, one side of No 364 was to be demolished, and the building was to be made good on a smaller footprint. In 2019, an application, ref: 05686/19, was made to discharge the pre-commencement conditions attached to the 2017 permission. Approval was given on 19 June 2019.

Reasons

Character and appearance - the bungalow

10. No 364 is a semi-detached bungalow which is located in a predominantly residential area. Prior to any works taking place, the building had a symmetrical frontage with a central door and windows on either side. The front part of the building had a gable end which mirrored that of the adjoining bungalow at 362 Tempest Road. To the rear, an extension ran back at 90 degrees, also with a gabled roof, and a porch entrance right at the back.

11. The proposed plans attached to the 2017 permission show that the side elevation of the bungalow was to be reformed in brick, and raised to meet the level of the truncated roof slopes. As built, the majority of the new side wall has been finished in brick, but the flat-roofed first floor Extension 1 has been clad in uPVC panelling, which wraps around the rear elevation. In addition, a first floor rear extension, Extension 2, has been added which is set back from Extension 1, and adjoins the boundary with No 362. At the back, a new lean-to porch entrance has been added. The walls of this structure are finished in render and it has grey roofing.
12. Although the pictures attached to the enforcement notice show the cladding as white, it had been painted dark grey at the time of my site visit. I note also that the cladding, as built, is shallower than shown in the side elevation drawing attached to refused application ref: 11166/21, but extends further towards the front of the building.
13. The Council's document entitled 'House Extensions - Supplementary Planning Document' (HE-SPD) states that, in general, 'a well designed extension should be subordinate in relation to the dwelling and should be of a size and scale which is in proportion to the existing house.'
14. It advises that pitched roofs are the most suitable for extensions especially if they are visible from the street, and that flat roofed two storey side extensions are not, in design terms, visually acceptable and do not provide a satisfactory solution. Extension roofs should be subordinate to the existing main roof, reflecting the style and pitch of the existing roof and be hipped or gabled with tiles or slates to match.
15. It goes on to say that extensions to the roof area should not simply result in the existing side or rear walls being extended upwards. Such proposals cannot be considered as dormer extensions. They will generally be unacceptable as the property as a whole will then appear to be flat roofed rather than there being a sympathetically designed extension within the roof space.
16. As built, the development comprises a new first floor storey at the back of the bungalow. Spanning the full width of the roof, it results in disproportionate bulk at the upper level, appearing neither sympathetic nor subsidiary to the modest scale of the existing building. The flat roof is clearly visible from the road, and is contrary to the guidance of the HE-SPD. It appears out of character with the original form of No 364, and there is little evidence to show that such a development is characteristic of the area. Similarly, there is little to show that the vertical uPVC boarding relates to the appearance of the main house, or is characteristic of the surrounding dwellings.
17. I accept that the 2017 permission would have changed the appearance of the bungalow, and particularly of the side elevation that is clearly visible from the road. I agree that the proposals, as approved, would have resulted in a somewhat visually awkward side elevation, in comparison to the original form of the house. However, the rear extension as approved would have retained at least part of the roof slopes that characterise the main house.
18. The appellant argues that Extension 2 is completely hidden from public view in its location behind Extension 1, which she argues would justify its retention. However, it would be visible to those coming and going from the new dwellings

behind No 364. From that vantage point it appears markedly out of place, particularly in comparison to No 362, which was presumably designed as a mirror image of No 364. In any event, the principle of good design applies to all development, even if it is not readily visible from the public realm.

19. By way of a fallback position, the appellant argues that an extension similar to Extension 2 could be built under permitted development rights. Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 provides permitted development rights for the enlargement of a house consisting of an addition or alteration to its roof, subject to a number of limitations. For example, at paragraph B.1(d), it is specified that any additional roof space created must not increase the volume of the original roof space of the house by more than 50 cubic metres for semi-detached houses. Any previous enlargement to the original roof space in any part of the house must be included in this volume allowance.
20. I have no reason to doubt that the appellant would seek to utilise her permitted development rights in the event of the removal of the unauthorised development to the bungalow. Nonetheless, she has not provided calculations to show how large an extension she could build under her permitted development rights, or addressed the other requirements of Class B. That being the case, it is difficult for me to make any meaningful comparison of such a structure with Extension 2 as built. This circumstance greatly limits the weight I can give to this fallback position.
21. Turning to the rear porch, it is subservient in scale to the rest of the building. It is simple in form, with a mono-pitch roof that reflects the originally pitched roof of the bungalow. For those reasons, I find that the porch is acceptable in terms of its visual effect on No 364 and its surroundings.
22. However, by virtue of its excessive size, unsympathetic design, and poor relationship to the appeal property, the first floor extension unacceptably harms the character and appearance of No 364 and of the surrounding area. The development therefore conflicts with Policies CG3 and OA3 of Bolton's Core Strategy Development Plan Document (CS) which amongst other things, seek to ensure that new development conserves and enhances the character of its environment, and with the advice set out in the HE-SPD. It also conflicts with the National Planning Policy Framework (NPPF), which states that good design is a key aspect of sustainable development.

Character and appearance - the two dwellings

23. As noted above, planning permission is in place for two new houses on land to the rear of No 364. From the evidence before me, the main difference between the approved scheme and the development as built is an increase in the ridge height and the finished ground floor levels of the new dwellings, and raised land levels within their respective plots. The key consideration therefore is whether those variations give rise to material harm when compared to the permitted scheme.
24. I am satisfied that the houses have been built on the same footprints and in the same locations as permitted in the 2017 scheme. The Council now assert that the built scheme appears 'as a cramped form of development with very little spacing between neighbouring dwellings'. However, if the footprint and

- layout are as permitted, then it is difficult to see how this conclusion can have been reached.
25. The appellant confirms that the overall height of the houses has increased by approximately 100mm over the approved height. The internal ground floor finishes have been raised by about 400mm in House 1, and by approximately 325mm in House 2. She states that this difference has been achieved by reducing the internal floor-to-ceiling heights on the ground floors by the stated dimensions. The Council do not dispute this evidence.
26. As the varied floor levels are not perceptible from the outside, it follows that these changes have had no effect on the character and appearance of the surrounding area. Conversely, an increase of 100mm to the ridge heights can be perceived, but this change needs to have materially harmed the character and appearance of the surrounding area in order to warrant the withholding of consent.
27. On my visit, I saw that the new houses are partially visible from the main road along the access road next to No 364. From this vantage point, in comparison to the surrounding two storey houses, they appeared to be in keeping with the typical scale of development in the area. The appellant has produced topographical and levels plans to show that the new houses sit comfortably within the range of eaves and ridge heights found in the area. I saw nothing on my visit to suggest otherwise, and the Council produce no quantified evidence to contradict that of the appellant.
28. On the contrary, the Council make a number of quite generalised statements in relation to the visual effect of the new dwellings. They say that they would be visible from the rear elevations of neighbouring properties and are in a highly prominent location. However, this is the same situation as when they considered the original application. They point to the 'actual size when factoring in [their] height and mass at upper levels', finding that the dwellings as built appear 'considerably larger than those approved'. However, if the only visible change to the buildings is a 100mm increase to the ridge height, it is difficult to conclude that any substantial 'mass' has been added to them.
29. Turning to the matter of the land levels surrounding the new houses, the Council state that the land levels have been raised by approximately 1m across the site. This is shown in "Existing/Proposed site sections drawing 7908/T90", dated June 2021. The slope towards the boundary fencing starts at around 1m distance from the fencing. As a result, the fencing only provides 0.6-0.9m of effective screening, as the garden levels of the new houses are set at a higher level.
30. However, these changed land levels are not perceptible from outside the site. As the boundary fencing remains in place, views of the land from the neighbouring dwellings are somewhat curtailed. Therefore, whilst I shall consider the land levels further in relation to living conditions, there is little to show that the regrading of the land in itself has materially harmed the character and appearance of the site or its surroundings.
31. I therefore conclude that no material harm arises to the character and appearance of the surrounding area as a result of the two new dwellings as

built. Therefore, no conflict arises with CS Policies CG3 and OA3, or with the NPPF, in respect of this element of the appeal scheme.

Living conditions – the two dwellings

32. I note that, in considering the 2017 permission, planning officers were satisfied that the development would achieve adequate separation distances of about 17m between the windows serving habitable rooms of the proposed dwellings and their neighbours. As the houses have been constructed to the approved footprints in the approved locations, the separation distance between them and the neighbouring dwellings remains the same.
33. Although the houses are slightly taller than approved, the first floor windows are set at the approved heights. That being the case, there will be no material difference in the degree of overlooking between the upper floors of the new houses and their neighbours. Therefore, in terms of overlooking from within the new buildings, the key consideration is whether the increased ground floor window levels will give rise to materially more harmful overlooking and loss of privacy once the new houses are occupied.
34. The Council contend that harmful overlooking and loss of privacy will occur between House 1 and the residences at 14 and 16 Copperfields, and between House 2 and neighbours on Tempest Road. In assessing this matter, it is important to understand the relationship of the windows of the habitable rooms in the new houses towards the neighbouring houses.
35. With reference to the ground floor plan of House 1, only the windows of the lounge look towards neighbouring properties. In the case of 16 Copperfields, the north facing family room window of House 1 faces towards the back of the garage, which does not appear to be a habitable space. The north facing ground floor lounge window looks across the driveway of No 16, which is not an area that is likely to be occupied for leisure purposes.
36. However, the west facing lounge window looks towards the private outdoor area at the back of 14 Copperfields. This separation distance is within the 17m radius and is likely to be intrusive to residents of No 14, introducing overlooking of their private garden where none previously existed.
37. Similarly with House 2, only two lounge windows look towards neighbours. The south-east window looks towards the rear of 370 Tempest Road. However, the separation distance between that window and the back elevation of No 370 comfortably exceeds 17m, and so I am satisfied that no harmful effect would result. Conversely, the south-west window in this lounge looks towards the rear elevations of 378 and 380 Tempest Road, but at closer quarters, which is likely to materially harm the sense of privacy at those dwellings.
38. Although the appellant contends that height rises of 325mm and 400mm are relatively small, they would make a significant difference to the eye levels of the future occupants. In the absence of evidence of actual sightlines future occupants would have towards the existing properties, I cannot be certain that the proposed fencing would be sufficient to maintain a satisfactory degree of privacy between the dwellings in question.
39. The appellant suggests that the two windows in question could be obscurely glazed so as to mitigate overlooking. In terms of the living conditions of future

residents, this would be acceptable as the lounges are already well served by the other two sets of windows.

40. However, from a design point of view, I find this solution to be unsatisfactory. It would amount to a situation where two windows, which are not essential to the rooms in any case, would be finished in a way that is more commonly associated with bathrooms and WCs. There is no evidence that the obscure glazing of sizeable windows within main living spaces is a typical feature in the vicinity. Therefore, whilst this measure would address one issue, it would give rise to another and so is not a sustainable solution.
41. I therefore conclude that, as built, the appeal scheme materially harms the living conditions of neighbouring residents, contrary to CS Policy CG4, insofar as it requires new development to protect amenity and privacy, and the NPPF, which seeks a high standard of amenity for existing and future users. Whilst the windows could be obscure glazed, this would amount to poor design, harming the character and appearance of the new dwellings, and so would conflict with CS Policies CG3 and OA3 insofar as they require good design.

Conclusion

42. For the reasons above, I conclude that the appeal scheme conflicts with the development plan as a whole. Appeals A and B are dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.

Appeal A on ground (f)

43. Ground (f) is that the steps required to comply with the requirements of the notice are excessive.
44. The enforcement notice requires the uPVC materials used in Extension 1 to be removed and replaced, and the roof profile of Extension 1 to revert to its permitted form. I accept that the overall massing of Extension 1 would remain. However, the unauthorised development, which I have found to be unacceptable in terms of its design, would be removed in favour of a scheme that has planning permission.
45. The appellant goes on to argue that Extension 2 would effectively be screened, and so it should be retained as it would not be visible from the street. However, as discussed above, the first floor extension as a whole will be visible from the rear in the event that the two new dwellings are finished and occupied. I have found it to be unacceptable in terms of its character and appearance, and so its removal would satisfy the aims of the notice.
46. I note that the appellant is seeking planning permission for an alternative solution, which she is free to implement once consent has been gained. Alternatively, she may wish to make use of her permitted development rights at No 364 once the requirements of the notice have been met.
47. In the meantime, I find that the requirements of the notice are commensurate with its aims, and so the appeal on ground (f) fails.

Appeal A on ground (g)

48. Ground (g) is that the time given to comply with the notice, in this case 90 days, is too short.
49. The appellant anticipates that the uPVC cladding to Extension 1 could be removed and replaced within the timeframe. However, the requirement to remove Extension 2 and remodel Extension 1, and also adjust the floor levels in the two new dwellings, would likely require the commissioning of appropriate builders, the sourcing of materials, and an appropriate timeframe to carry out the works.
50. I agree that it would be difficult to comply with the requirements within 90 days, not least as the appellant would be reliant on the timescales of third party contractors. I therefore find that the suggested six months would be a more reasonable and practical timescale to allow for the requirements to be carried out in full.
51. To that extent, the appeal on ground (g) succeeds.

Appeal C – s78

Main issues

52. The main issues are:

- the effect of the development on the character and appearance of the surrounding area;
- the effect of the development on the living conditions of the future residents of the new dwellings, and of neighbouring residents, with particular regard to privacy and overlooking; and
- whether sufficient information has been provided with regard to the proposed surface water drainage scheme.

Reasons

53. Appeal C seeks to retain the two new detached dwellings largely as built, but proposes some modifications to the development with a view to addressing the concerns of the Council.

Living conditions

54. Under Appeals A and B, I found that two windows located respectively in the ground floor lounges of Houses 1 and 2 would give rise to harmful overlooking of neighbouring properties, eroding the sense of privacy afforded to those occupants once the new houses were occupied. Although the installation of obscure glazing in these windows would mitigate this harm, I found that it would not be acceptable in design terms.
55. It is now proposed to close up these windows entirely and infill the openings with brick to match the existing walling. I conclude that this proposal will result in acceptable living conditions for neighbours, and for future residents as these rooms will still have sufficient light and outlook. As a result, no conflict arises with CS Policy CG4, or with the NPPF.

Character and appearance

56. In design terms, the proposed blocking up of the windows will result in a coherent design that will be in keeping with the character and appearance of the surrounding area, and reflect the character of the new dwellings themselves. I therefore find it to be acceptable.
57. It is also proposed to remove the spoil from the rear gardens of the new dwellings and to re-grade the land to levels that are akin to those approved in the 2019 permission. The resulting land would be higher at points closest to each house to correspond with the higher ground floor levels, but would then rapidly be graded down to level off at points equal to the land levels in neighbouring gardens. I find this to be acceptable in terms of the appearance of the site and its overall effect on the character and appearance of the surrounding area.
58. The scheme further proposes new 2m high close-boarded timber fencing along the western and southern boundaries of the site. A further short length of 2m high close board fencing would be erected to the east side of House 2, along with a short section of fencing to the immediate west of the footpath within the garden to the west of House 1. The appellant states that this fencing would all be placed on original land levels and would simply upgrade the existing fencing.
59. The Council argue that such fencing would result in a dominant structure which would increase the sense of enclosure within the affected garden areas, and appear out of character with the majority of boundary treatments in the vicinity. On my visit, I saw that there is already tall fencing on the boundaries, particularly at the backs of the plots. Therefore, the proposed fencing at a small additional height would be in keeping with the established character of the area.
60. Drawing these threads together, I find that the proposed development would keep in with the character and appearance of the surrounding area. As a result, no conflict would arise with CS Policies CG3 and OA3, or with the NPPF.

Drainage

61. CS Policy CG1.5 seeks to reduce the risk of flooding in Bolton and other areas downstream by minimising water run-off from new development and ensuring a sequential approach is followed, concentrating new development in areas of lowest flood risk.
62. The appeal site is located within Flood Zone 1, an area defined as having the lowest risk of a flooding event occurring. On that basis, the Council do not consider that the appeal scheme would be at significant risk of a flooding event or result in any significant additional risk of flooding elsewhere. The second limb of Policy CG1.5 is therefore satisfied. Nonetheless, they found that insufficient information concerning the proposed surface water drainage scheme for the development was submitted with the application to which Appeal C relates.
63. The Council confirm that drainage details for the original scheme were approved under discharge of condition application ref: 05686/19. However, amended drainage plans were submitted with the refused planning application that is the subject of Appeal B. I note that the Council's Drainage Officers

requested more information and clarification on those amendments. However, I can only take into account the drainage/flooding issues and evidence relating to the scheme before me under Appeal C.

64. The Council say that the proposed surface water scheme for the Appeal C proposal is unclear, especially as the proposed land levels would differ from the first scheme. They also allude to certain surface water runoff issues that came to light at the appeal site during construction, with neighbouring properties witnessing flooding from the appeal site.
65. In their representation, a neighbour states that their garden has been flooded on a number of occasions since construction commenced, but little further detail is given. It appears from this statement that a mound of excavated soil that remains on site may be aggravating the problems that have been experienced. In any event, despite their concerns, I note that the Council offer little substantive evidence in terms of the flooding events that have occurred.
66. In response, the appellant states that the site is served by a historic field drain, which is sited along the western boundary of the site, and a new surface water drainage system that was installed at the site. The installed system comprises a hydro brake and storm water storage crates which are sited under the driveway area. I note the photographs provided of the system.
67. The appellant goes on to say that details of the system, including hydrological calculations, were sent for approval to the Council's Building Regulations team in 2021 and were inspected during installation. I have been provided with emails dated 21 June 2022 from a Council officer confirming that the drainage system has been inspected and drainage tests carried out, and that the installation had been 'passed'.
68. The Council do not refute this evidence, and make no comments on the findings of their Building Control team. On the balance of the evidence before me, I am therefore satisfied that measures have been demonstrated to ensure that the proposed development would minimise water run-off. There is little to show that the proposal would materially increase the risk of flooding in the locality.
69. I therefore conclude that the proposed scheme meets the requirements of CS Policy CG1.5, and complies with the NPPF, which requires development to be located in areas with a lower risk of flooding, where possible.

Other Matters

70. Concerns have been raised regarding the loss of light at surrounding properties. However, I am satisfied that in view of the separation distances achieved, there will be no material loss of light at neighbouring dwellings. Similarly, there is no evidence of material harm to local ecology arising from the development.
71. I have noted concerns over the presence of the mound of excavated soil on the land, but this does not form part of the proposal, and will need to be removed in order to carry out the proposed regrading of the curtilage land to the new houses.

Conditions

72. I have had regard to the planning conditions that have been suggested by the Council. For the avoidance of doubt, and in the interests of proper planning, it is appropriate that the development is carried out in accordance with the approved plans. In some cases, I have amended the wording for clarity and brevity.
73. Conditions relating to the blocking up or obscure glazing of identified windows, and also the installation of balcony screening, are appropriate to preserve the amenity of neighbours. Conditions relating to landscaping and regrading of the land are appropriate in the interests of character and appearance. Conditions ensuring adequate car parking and the formation of an appropriate visibility splay are necessary for highway safety.
74. As the vehicle parking areas have yet to be finished and lighting has yet to be installed, it is necessary to impose a condition seeking these details. However, I have removed the term 'drainage' from this condition as this matter has been addressed. A condition seeking details of bin storage facilities is appropriate in the interests of proper planning.
75. Given the site's sensitive location in a tightly built-up area, I consider it necessary to remove permitted development rights in respect of extensions and other works that would materially affect the external appearance of the dwelling houses and their curtilages. I have not imposed the separate condition removing permitted development rights for new dormer extensions as that is included in the previous condition.
76. I have not imposed the condition relating to surface water disposal as this matter has already been addressed. I have not imposed the condition relating to contamination as there is no evidence of this issue at the site, and in any event, the ground works are now largely complete. I have not imposed the condition seeking the retaining of fencing as it has not been shown to be necessary. Similarly, as the new boundary treatments are shown on the approved plans, the need for further information has not been shown to be necessary.

Overall conclusion

77. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice, as amended, is upheld.
78. Appeal B is dismissed.
79. For the reasons above, I conclude that the proposed development would comply with the development plan as a whole, and so Appeal C is allowed.

Elaine Gray

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
7908/T90; "Proposed Drawings/Elevation & FI Plans House 1", August 2022
7908/T90; "Proposed Drawings/Elevation & FI Plans House 2", August 2022
7909/T90; "Proposed Site Plan & Sections", August 2022
"Proposed External Levels", August 2022
2. No building hereby permitted shall be occupied until the ground floor lounge window openings have been blocked up in brick in accordance with approved plans 7908/T90; "Proposed Drawings/Elevation & FI Plans House 1" and 7908/T90; "Proposed Drawings/Elevation & FI Plans House 2". The brick used to block up the openings shall match those of the existing buildings in terms of colour, texture and size.
3. No building hereby permitted shall be occupied until the external garden areas have been remodelled in accordance with approved plans 7909/T90; "Proposed Site Plan & Sections" and "Proposed External Levels".
4. The development hereby permitted shall be carried out in accordance with drawing 1452 02; S78 Works to Adopted Highway, as approved within discharge of condition application 05686/19 and shall be retained in such a condition thereafter.
5. No building hereby permitted shall be occupied until a visibility splay measuring 2.4 metres by 25 metres is provided at the junction of the private access with Tempest Road and subsequently maintained free of all obstructions between the height of 1.05 metres and 2 metres, as measured above carriageway level.
6. No building hereby permitted shall be occupied until full details of both hard and soft landscape works have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved. These details shall include hard surfacing materials and soft landscape works which shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and opportunities for biodiversity enhancement including native tree / shrub planting, bat boxes and bolstering of hedgerows where appropriate. The approved scheme shall be implemented in full and carried out within 6 months of the occupation of any of the buildings or the completion of the development, whichever is the sooner, or in accordance with phasing details included as part of the scheme and subsequently approved by the local planning authority. Any trees and shrubs that die or are removed within five years of planting shall be replaced in the next available planting season with others of similar size and species.
7. The first floor en suite and hallway windows in the rear elevation of dwelling House 02 and first floor bathroom window in the rear elevation of dwelling House 01 hereby permitted shall be either non-opening or with openings more than 1.7 metres above the finished floor level and fitted with obscure

glazing whose obscuration level is 5 on a scale of 1-5 (where 1 is clear and 5 is completely) of the Pilkington Glass scale (or equivalent). The windows shall be permanently retained in that condition thereafter.

8. No building hereby permitted shall be occupied until a scheme detailing how parts of the site to be used by vehicles are to be laid out, constructed, surfaced, and lit has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the first occupation of the development and thereafter made available for the use of vehicles at all times.
9. No building hereby permitted shall be occupied until a scheme detailing the proposed bin storage for each dwelling house has been submitted to and approved in writing by the local planning authority. The bin storage facilities shall be implemented in full, in accordance with the approved details, prior to the first occupation of the dwelling houses and shall be retained thereafter.
10. No building hereby permitted shall be occupied until no less than 2 car parking spaces per one approved dwelling house and 4 car parking spaces for 364 Tempest Road with minimum dimensions of 2.5 metres by 5.0 metres have been provided within the curtilage of each dwelling house, in accordance with approved drawing 7909/T90; "Proposed Site Plan & Sections". These spaces shall remain available for the parking of cars at all times thereafter.
11. No building hereby permitted shall be occupied until a scheme detailing the proposed screens to the sides of balconies of the dwelling houses hereby permitted has been submitted to and approved in writing by the local planning authority. The proposed screens should be at least 1.7 metres high above the finished floor level and constructed of materials comprising either obscure glazing (whose obscuration level is 5 on a scale of 1-5 (where 1 is clear and 5 is completely) of the Pilkington Glass scale (or equivalent)) or brick walling matching the approved materials. The screens shall be installed in accordance with the approved details prior to the first occupations of the dwelling houses and shall be retained as approved thereafter.
12. The garages hereby permitted shall remain available at all times for the parking of motor vehicles.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015, Schedule 2, Part 1 (Classes A to H inclusive), Part 2 (Class A), or any Order revoking or re-enacting that Order, no extensions, dormers, porches, garages, ancillary curtilage structures, swimming pools, enclosures, fences, walls or alterations which materially affect the external appearance of the dwellinghouse and its curtilage shall be constructed without prior planning permission being obtained from the local planning authority.