



Appeal Decision

Site visit made on 17 November 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2023

Appeal Ref: APP/A2335/W/23/3325254

5 Dalton Road, Lancaster LA1 3HD

- 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 Lindsay Robertson against the decision of Lancaster City Council.
 - The application Ref 22/00873/FUL, dated 10 July 2022, was refused by notice dated 31 January 2023.
 - The development is the proposed erection of 2 new dwellings and associated landscaping and access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the site visit was arranged as an unaccompanied site visit, I was asked to view the appeal site from the garden of 39 Ullswater Road (No. 39) in order to assess the effect of the proposal on outlook from that property. I accepted the invitation and conducted this part of the site visit as an access required site visit.
3. The government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. This does not materially change the planning policy context in respect of the main issues, and I have determined the appeal on the basis of the new Framework.

Main Issues

4. The main issues are:
 - Whether the development would provide suitable living conditions for future occupiers with particular regard to outlook and privacy and the adequate provision of external amenity space;
 - The living conditions of occupiers of surrounding dwellings with particular regard to overshadowing and privacy;
 - Whether the development provides adequate mitigation for the loss of existing trees on the site; and
 - Surface water drainage.

Reasons

5. The appeal site is located on Dalton Road. It is currently occupied by three detached garages and a portion of the gardens of 3 and 5 Dalton Road (No. 3 and No. 5), 41 Ullswater Road (No. 41) and 44 Grasmere Road

(No. 44). The appeal involves the demolition of the existing garages and their replacement with 2 two-storey dwellings (one 3-bedroomed and one 2-bedroomed) with off-street parking provision in between the two dwellings.

Living Conditions – future

6. Policy DM29 of the '*Part Two: Review of the Development Management DPD*¹ (2020) (DMDPD) sets out the Council's approach to new development through good design, the supporting text to which amplifies the expectations of new development to provide good quality garden space. Whilst the overall quantum of garden space provided for each dwelling would not be the recommended 10 metres in length, they would provide an overall area which would meet the standard set out in the policy justification.
7. Whilst the proposal exceeds those standards it would be laid out in a form that would not provide the occupiers with meaningful space for sitting out, drying of laundry, or children's play, and is likely to be in shade for considerable parts of the day. Furthermore, both gardens would be significantly smaller than the majority of other dwellings in the immediate locality.
8. I accept that the gardens could be low maintenance and future occupiers would be aware of the size of the gardens from the outset. However, I have not been provided with any reasoned justification why they should not be in line with the requirements of the DMDPD Policy DM29.
9. The proposed dwellings would be approximately 12 metres apart. Their principal elevations would face one another with an intervening courtyard used to provide parking and bin and bicycle storage. Although there would be little direct overlooking between the two properties, their relationship, due to their distance and the use of the courtyard for parking would be unduly oppressive for occupiers to a degree which would not be appropriate for residential occupation in this location. They would be much closer to one another than the properties in the terraces close by. Although occupiers of the dwellings would be able to monitor use of the courtyard space, they would be likely to be uncomfortably aware of their neighbouring occupiers in a manner which would be overbearing and would compromise privacy.
10. I therefore conclude that the proposal would fail to provide appropriate living conditions for future occupiers of the proposed dwellings with regard to outlook and privacy and the provision of adequate external amenity space. Consequently, the proposal conflicts with DMDPD Policy DM29 which seeks to provide, amongst other things, appropriate amounts of garden space for proposed occupiers and appropriate separation distances. It would also conflict with the aims of Section 12 of the Framework in this respect.

Living Conditions – existing

11. The proposed dwellings would be close to the boundaries of Nos. 3, 5, 41 and 44. Gardens here are long and particularly narrow. The right-hand dwelling would be approximately 22 metres from the rear elevations of Nos. 5 and 44, however, windows would look directly into their gardens at very close quarters. Furthermore, the left-hand dwelling would be much closer than that

¹ 'A Local Plan for Lancaster District 2011 – 2013 Part Two: Review of the Development Management DPD Adoption Version' July 2020

to the rear elevations of No. 3 and No. 41. This would result in an overbearing impact on those properties.

12. The rear elevations of both dwellings would be very close to the side boundaries of the gardens of No. 39 and 42 Grasmere Road (No.42). On my site visit I was able to appreciate the narrow nature of the gardens in the locality. The orientation and scale of the proposed dwellings would be overbearing and overshadowing for the users of those spaces. The narrowness of the garden plots would also mean that it is likely that the gardens of properties beyond those closest to the appeal site would also be overshadowed.
13. Whilst I note that the intended occupation of one of the dwellings would be a friend of the current occupier of No.5, I cannot be certain that this would be the case. Nevertheless, a personal permission would not be appropriate, nor would it be appropriate to condition this. Furthermore, I am mindful of advice in the Planning Policy Guidance (PPG) in general that planning is concerned with land use in the public interest, it is therefore probable that the proposed development would endure long after these personal circumstances cease to be relevant. This is a matter to which I ascribe little weight.
14. Consequently, I conclude that the proposal would be unduly harmful to the living conditions of neighbouring properties with regard to outlook and privacy. The proposal would therefore conflict with DMDPD Policy DM29 which seeks to ensure that new development, amongst other things, has no detrimental impact to amenity in relation to overshadowing, overlooking and privacy. It would also conflict with the aims of Section 12 of the Framework in this respect.

Loss of Trees

15. The development would lead to the loss of a number of trees on the site including but not limited to elder, hawthorn, apple, rowan and hazel. The arboricultural assessment submitted indicates that all bar the rowan to be of fair condition with a life expectancy of in excess of 10 years, however, not suitable for long term retention. Nevertheless the trees make a positive contribution to the character and appearance of the appeal site and the area in general.
16. The Council is concerned that the provision of replacement trees falls short of a 3:1 replacement ratio. I have not, however, been directed to any policy requirement to provide replacement trees at this rate. Nevertheless, DMDPD Policy DM44 requires developments to protect and enhance biodiversity and provide a net gain of biodiversity assets.
17. A proposed planting plan indicates that replacement trees would be provided mainly within the gardens of Nos. 3 and 5, No. 41 and No. 44, which although outside the red line boundary are all within the current control of the appellant.
18. The planting plan before me provides no indication of the species or specifications of the proposed replacement planting I therefore cannot be certain that the proposal would provide a net gain of biodiversity assets. Furthermore, I am not convinced that a condition requiring planting to be carried out and maintained in the long term in the locations shown on the plan would pass the tests for conditions set out in the Framework and PPG.

19. I therefore conclude that the proposed development would not adequately provide a net gain of biodiversity assets. The proposal therefore conflicts with DMDPD Policies DM44 and DM45 which require new development to preserve and enhance biodiversity assets and protect trees which positively contribute to the visual amenity of a location.

Surface Water Drainage

20. The council refers to the lack of information on surface water drainage. I have not been made aware by either party that the site falls within an area which is at increased risk of flooding, nor have not been provided with any substantive evidence that the development would not be able to connect to the main drain and sewer system. However, given the scale of the development and its location within an established residential area, it would be reasonable to presume that this would be possible.
21. Opportunities to incorporate sustainable drainage systems on site may be limited due to the size of the development, therefore it would be unreasonable to suggest that a scheme should be submitted prior to the grant of planning permission. It would also be reasonable, however, that a condition regarding surface water drainage could be imposed on any permission granted for the development.
22. As the proposed development would not result in an unacceptable increased risk of flooding, there is no overriding reason why this matter could not be covered by a suitably worded condition. I am satisfied that there would therefore be no conflict with DMDPD policies DM34 and DM35 which seek to, amongst other things, ensure that surface water is managed sustainably within new development and waste water is managed appropriately.

Other Matters

23. I note that a dwelling has been built in the gap between houses directly opposite the appeal site on Dalton Road. I do not have any information before as to how this came about or the policy context within which it was granted planning permission. Nevertheless, this appears to be a single dwelling and does not have the same relationship with surrounding dwellings. Therefore, it is materially different from the scheme before me, and its presence does not persuade me that the appeal proposal is acceptable in its own right.
24. The proposal may provide two compact, lifetime homes in an urban setting; however, I have not been provided with any substantive information to demonstrate that the dwellings would comply with the lifetime homes standard. The garages on site may also be of a poor quality. These factors carry little weight and do not outweigh the harm I have found, however.
25. The appeal site lies within the Zone of Influence of European Protected Sites on Morecambe Bay and Duddon Estuary, which are recognised for their value as coastal habitats. Had I been minded to allow the appeal, it would have been necessary to establish whether the proposal on its own or in combination with other projects would be likely to have significant environmental effects on the integrity of the Habitats Sites. However, given my findings above, it has not been necessary for me to pursue this issue further. A finding that the proposal would not have an adverse effect on the integrity of those sites, with or without any mitigation, would be at best a neutral matter.

Planning Balance

26. The Council acknowledges that its recent delivery of housing is substantially below its target. Paragraph 11(d) of the Framework therefore should be engaged. There are no protected assets or areas as outlined in paragraph 11(d)(i) that indicate that the scheme should be refused.
27. The proposals would only contribute a net addition of two dwellings to the supply of housing in the area. Given the number of dwellings proposed, the benefits of providing two additional houses where there is a shortfall would be limited.
28. A benefit would arise from the use of environmentally sustainable features. I have attributed moderate weight to this benefit. I have found harm on the the living conditions of both existing and future occupiers and to the biodiversity of the site. That harm when taken together would be significant. All these issues carry significant weight. With the above in mind, the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh its benefits when assessed against policies in the Framework taken as a whole. Therefore, it would not represent sustainable development for which the presumption in favour applies.

Conclusion

29. For the reasons set out above, there are no other material considerations, individually or cumulatively, that would warrant taking a decision otherwise than in accordance with the development plan taken as a whole. I therefore conclude that the appeal should be dismissed.

K L Robbie

INSPECTOR