



Appeal Decision

Site visit made on 31 October 2023

by Mrs A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2024

Appeal Ref: APP/R2520/W/23/3318864

Adjacent to 20 Nettleton Drive, Gray Lane, Lincoln LN6 9GF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mark Kane of M & D Homes against the decision of North Kesteven District Council.
- The application Ref 22/1084/FUL, dated 22 July 2022, was refused by notice dated 27 September 2022.
- The development proposed is the erection of a new bungalow.

Decision

1. The appeal is dismissed.

Procedural Matters

2. It has been brought to my attention that the Central Lincolnshire Local Plan ('the LP') was adopted in April 2023. The LP replaces the Central Lincolnshire Local Plan, adopted 2017 and the Council have advised that Policies S4 and S53 have superseded Policies LP2 and LP26 outlined within the decision notice. It is mandatory for me to take account of the most relevant and up-to-date information in reaching a decision and I have therefore dealt with the appeal on this basis. The information was contained within the Council's appeal statement and therefore the appellant had the opportunity to comment on the LP and has not been prejudiced.
3. Since the appeal was lodged, a revised National Planning Policy Framework ('the Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal. Additionally, the Council has subsequently approved the felling of a tree within the appeal site that is subject to a Tree Preservation Order¹ ('TPO'). The main parties had the opportunity to comment upon this decision and therefore have not been prejudiced.
4. The present appeal scheme follows a previous appeal² at the site for a three-bedroom bungalow. While I have had regard to the previous appeal decision, I have determined the current proposal on its own merits.
5. I have amended the street name in the banner heading above to address a typographical error within the planning application form.

¹ Planning Ref 23/0666/TPO

² Appeal Ref APP/R2520/W/22/3300117

Main Issues

6. The main issues are the effect of the proposed development on:
- a) the character and appearance of the surrounding area;
 - b) the living conditions of future occupiers, with particular reference to outlook, light, privacy, noise and disturbance, and private garden areas; and
 - c) the living conditions of the occupiers of 20 Nettleton Drive, with particular reference to outlook.

Reasons

Character and Appearance

7. The appeal site comprises an irregular shaped plot of land enclosed to the north and east by two-storey dwellings that front Nettleton Drive, and to the west by two 1.5-storey dwellings which are accessed from Gray Lane which forms the southern boundary. A large, mature tree subject to a TPO is adjacent to the western boundary. The dwellings surrounding the appeal site are predominantly 1.5-2 storeys with rectangular footprints set within rectangular plots with small gardens to the front and private gardens to the rear. The main outlook from these dwellings is from their front and rear elevations.
8. In contrast, the proposed dwelling would be single storey, L-shaped and would wrap around the southern and western boundaries of 20 Nettleton Drive with limited separation. I acknowledge that the proposal has been sited to minimise its impact on a TPO tree. However, this would result in a contrived form of development, crammed into one corner of the plot. Additionally, the proposed dwelling's garden would be separated into three distinct areas with limited space separating the dwelling from the road. The fence surrounding the gardens to the north and west would follow the root protection area of the TPO tree and therefore would have a curved and unconventional shape with a narrow gap connecting the two. Furthermore, the main outlook from the proposed dwelling would be from its side elevations. Consequently, the proposal would not adhere to the established pattern of development surrounding the appeal site and would detract from its character and appearance.
9. In reference to the first main issue, the proposed development would harm the character and appearance of the surrounding area. It would conflict with Policies S4 and S53 of the LP which, amongst other things, state that residential proposals for unallocated sites will only be supported where it would preserve or enhance the settlement's character and appearance, and all development must contribute positively to local character and townscape.
10. It would also conflict with paragraphs 131 and 135 of the Framework and characteristics C1, I1 and B2 of the National Design Guide, published 2021 ('the NDG') that, amongst other things, seek to ensure that developments are sympathetic to local character, including the surrounding built environment, and respond positively to the surrounding context beyond the site boundary. It would adhere to paragraph 139 of the Framework that requires development that is not well designed to be refused.

Living Conditions - Future Occupiers

11. The floor-to-ceiling fenestration to Bedroom 1 would be within proximity of a 1.8m high fence and the canopy of a TPO tree. Consequently, the outlook from the bedroom would be significantly enclosed and shaded by the tree when in leaf. While the room would also have a roof light on the eastern roof slope, its positioning and size would have a limited affect in overcoming these issues. There would be a greater separation between the fence/TPO tree and the floor-to-ceiling fenestration to Bedroom 2. Accordingly, the outlook from, and light to, Bedroom 2 would not be significantly compromised.
12. The living space is open plan and would have patio doors within the eastern elevation providing access into a garden area and an additional window would be within the southern elevation. Therefore, there would be sufficient light and outlook for future occupiers of this room. Although two of the three distinct garden areas would be unusual in shape and partially overshadowed by the TPO tree, they would provide sufficient overall space for normal domestic use such as children's play, the drying of clothes and for a table and chairs.
13. I acknowledge that the existing TPO tree is to be felled. However, a condition of the permission is for a replacement tree to be planted close to the existing tree. When first planted, the replacement tree is unlikely to be of a comparable size to the existing tree and therefore its effect on the proposal would not be comparable. However, this would be in the short-term until the tree grows and matures. Accordingly, the replacement tree would likely have a similar harmful effect on the living conditions of future occupiers of the proposed development.
14. The low-level usage of Gray Lane as an access drive for two dwellings is unlikely to result in undue noise and disturbance for future occupiers of the proposed dwelling despite the proximity of the proposed fenestration and garden areas to the road. Some overlooking of the northern and eastern garden areas from the upper windows of 20 Nettleton Drive is likely to occur. However, the view over the eastern garden area would be oblique and the northern garden area is the smallest parcel with no direct access from the proposed dwelling and therefore is unlikely to be frequently used.
15. In reference to the second main issue, the proposed development would have an adverse effect on the living conditions of future occupiers, with particular reference to outlook and light to Bedroom 1. It would therefore conflict with Policy S53 of the LP which, amongst other things, seeks to ensure that homes and buildings do not result in harm to people's amenity within the proposed development. It would also conflict with paragraph 135 of the Framework that seeks to create places with a high standard of amenity for future users, and characteristics H1 and H2 of the NDC that seek to promote the health and wellbeing of residents. Furthermore, it would adhere to paragraph 139 of the Framework that requires development that is not well designed to be refused.

Living Conditions – 20 Nettleton Drive

16. The proposed dwelling would wrap around the corner of 20 Nettleton Drive's rear garden, extending approximately halfway along its rear boundary and would be sited in proximity to its boundary fences. No 20's rear garden is of a size that is commensurate with other gardens in the surrounding area and from my observations during my site visit, I do not consider it to have an overly shallow depth.

17. The proposed dwelling would be single storey with a pitched roof that would extend away from No 20's boundaries. The proposed dwelling's ridge height has been reduced from the previous appeal scheme, even though the previous Inspector did not raise an objection in this regard. Despite the reduction in height, the proposed dwelling would be partially visible above the existing boundary fences. However, the proposed dwelling would not appear unduly prominent or overbearing from the garden or the habitable rooms of No 20 due to its limited height, scale and roof shape, siting, and the presence of a garage/outbuilding within the corner of No 20's rear garden.
18. In reference to the third main issue, the proposed development would not adversely affect the living conditions of the occupiers of 20 Nettleton Drive, with particular reference to outlook. It would therefore comply with Policy S53 of the LP which, amongst other things, seeks to ensure that homes and buildings do not result in harm to people's amenity neighbouring the proposed development. It would also comply with paragraph 135 of the Framework that seeks to create places with a high standard of amenity for existing users, and characteristics H1 and H2 of the NDC that seek to promote the health and wellbeing of residents.
19. The Council's reason for refusal also refers to paragraph 139 of the Framework that requires development that is not well designed to be refused. As I have found that the proposal would not harm the living conditions of the occupiers of the neighbouring property, it is not applicable to this main issue.

Other Matters

20. The appellant asserts that the proposed dwelling would be low energy A-rated with the use of insulation, solar panels and an air source heat pump for future low running costs. However, LP Policies S6, S7 and S20 require all residential developments to reduce their energy consumption and prevent/minimise the impacts of overheating. Therefore, this is a neutral matter.
21. The Council has indicated that to comply with LP Policies S6, S7 and S20, an Energy Statement is required, and one has not been submitted. However, as I am dismissing the appeal, I do not need to consider this matter further, as it would not change my decision.
22. The proposal would make a positive contribution to the mix of housing within the district, particularly for those with level access accommodation needs. However, the benefit of one dwelling in this regard would be relatively modest.

Conclusion

23. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR