



Appeal Decision

Site visit made on 2 January 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Appeal Ref: APP/B2002/W/23/3321834

Tynedale (Anita Grove), Cheapside, Waltham DN37 0HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Glover against the decision of North East Lincolnshire Council.
 - The application Ref DM/1002/22/FUL, dated 9 November 2022, was refused by notice dated 3 February 2023.
 - The application sought planning permission for the resubmission of planning application DM/0208/22/FUL for the variation of Condition 1 (approved plans) as granted on DM/0857/21/FUL to revise the approved boundary treatments to plots 1, 3, 4, 5, 6 and 7 without complying with a condition attached to planning permission Ref DM/0857/21/FUL, dated 10 November 2021.
 - The condition in dispute is No 1 which states:
The development shall be carried out in accordance with the following plans:
Site Location Plan and Block Plan - 16-500-100L
Proposed Plans and Elevations for Plot 5 - 16-500-203H
Landscaping Plan - 16-500-103C
The following plans approved under DM/0406/21/FUL;
Proposed Plans and Elevations for Plot 7 - 16-500-205F
The following plans approved under DM/0308/20/FUL;
Proposed Plans and Elevations for Plot 4 - 16-500-202D
Proposed Plans and Elevations for Plot 6 - 16-500-204H
The following plans approved under DM/0420/16/FUL;
Proposed Drainage Plan - EWE/1987/01 Rev A
Proposed Plans and Elevations for Plots 1 and 2 - 16-500-200 Rev A
Proposed Plans and Elevations for Plot 3 - 16-500-201 Rev A
Proposed Plans and Elevations for Garages - 16-500-206 Rev A
Proposed Boundary Treatments - 16-500-101
 - The reason given for the condition is: *For the avoidance of doubt in the interests of proper planning and in accordance with Policies 5, 22, 34 and 42 of the North East Lincolnshire Local Plan 2013-2032 (adopted 2018).*
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Decision

1. The appeal is allowed and planning permission is granted for the variation of Condition 1 (approved plans) as granted on DM/0857/21/FUL to revise the approved boundary treatments to plots 1, 3, 4, 5, 6 and 7 at Tynedale (Anita Grove), Cheapside, Waltham DN37 0HU in accordance with the terms of the application, Ref DM/1002/22/FUL, dated 9 November 2022, and subject to the conditions in the schedule to this decision below.

Procedural Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
3. At the time of my site visit, the majority of the dwellings had been constructed, with some occupied. The revisions to the boundary treatments sought permission by this appeal also appeared to have taken place. Therefore, I have considered the appeal retrospectively.

Background and Main Issue

4. Planning permission¹ was granted for the demolition of a bungalow and the construction of seven dwellings. Planning permission² was subsequently granted to vary Condition 2 (the approved plans) to allow for amendments to the site layout and the design of the dwellings on plots 4, 5 and 6. A further planning permission³ was approved to vary Condition 1 (the approved plans) of the revised scheme to show the removal and replacement of a tree.
5. The appellant seeks planning permission for the retention of various changes to boundary treatments within the site⁴ as a variation to Condition 1 (approved plans) attached to planning approval DM/0857/21/FUL. The information before me suggests it is the omission of a 1.8m high close boarded fence along the northwest boundary of the site between the rear of 'Mount Royal' and the front of 7 Anita Grove that is in dispute between the main parties.
6. Accordingly, the main issue is the effect of the omission of the approved close boarded fence along the northwest boundary of the appeal site on the character and appearance of the surrounding area and the security of the adjacent neighbouring property.

Reasons

7. The northwest boundary comprises a narrow dyke that was flowing with water at the time of my site visit. Adjacent to the dyke, on the side of the appeal site, is a grass verge alongside an internal road that provides access to 5, 6 and 7 Anita Grove. On the opposite side of the dyke is a belt of trees and a post and wire fence, beyond which is a field/paddock and the rearmost section of land belonging to The Old Nurseries which, at the time of my site visit, comprised mown grass and outbuildings. It is proposed to leave this boundary as is, and not erect the 1.8m high close boarded fence along the full length of the grass verge as previously depicted on the approved drawing.
8. The close boarded fence would extend a considerable distance along the access road, unduly enclosing it. It would be domestic in appearance which would appear incongruous and significantly contrast with the rural character of the adjacent land. I have been directed to examples of close boarded fences within the appeal site and the surrounding area. However, they tend to surround the side and rear gardens of dwellings. Consequently, I find that the omission of the fence would greatly improve the character and appearance of the surrounding area.

¹ Planning ref DM/0420/16/FUL

² Planning Ref DM/0308/20/FUL

³ Planning Ref DM/0857/21/FUL

⁴ Planning Ref DM/1002/22/FUL

9. I acknowledge that the housing development has led to more people and vehicles being in proximity to the land belonging to The Old Nurseries than when it previously formed part of the rear garden to a bungalow. However, a dyke, a tree belt and a post and wire fence would impede people's ability to access the adjacent land, particularly when the dyke is flowing with water. Furthermore, No's 5, 6 and 7 provide natural surveillance of the boundary and access road; street lighting is located adjacent to the boundary that boosts security; and the road is a no through road with the section closest to No's 6 and 7 being private, which limits the number of passing people and vehicles. Consequently, I find that the omission of a fence would not impair the security of the adjacent neighbouring property.
10. It has been purported that a hedge along the northwest boundary was removed prior to the original planning application⁵ being submitted. I have been directed to a historic aerial photograph that appears to show a hedgerow along this boundary. The photograph is not dated, but the cars and the differences in the surrounding area suggest that it was taken a considerable time ago. Therefore, from the evidence before me, it is unclear when the boundary hedge was removed.
11. There is a dispute between the parties regarding the use of the land adjacent to the northwest boundary, with the landowner stating it forms a paddock and part of the garden to their property. However, it is clear from the landowner's historic aerial photograph that the land did not form part of the third party's garden at that time, nor I have not been provided with a Certificate of Lawfulness to confirm the use of the land as garden. Notwithstanding this, I have found that the absence of a boundary fence would not adversely affect the security of this land.
12. In reference to the main issue, the omission of the approved close boarded fence along the northwest boundary of the appeal site would not adversely affect the character or appearance of the surrounding area or the security of the adjacent neighbouring property. Therefore, it would comply with Policy 5 of the North East Lincolnshire Local Plan 2013-2032: Planning for Growth, adopted 2018 which, amongst other things, seeks to ensure that development proposals have regard to their impact upon neighbouring land uses by reason of disturbance or visual intrusion and areas of landscape, including open land that contributes to settlement character. It would also comply with Chapter 12 of the Framework that seeks to ensure that development are well designed with a high standard of amenity for existing and future users.

Other Matters

13. It has been suggested that a gate could be inserted within the fence to allow access for the maintenance of the dyke. However, a fence would considerably narrow the workable area and prevent the use of mechanical machinery. This view is supported by the Council's Drainage Team who state the fence should be avoided. It has been suggested by the adjacent landowner that the maintenance of the dyke could be done from their land. However, I do not have a mechanism before me to ensure this would occur.
14. The failure of the Council to impose a pre-commencement condition for the erection of the previously approved fence is noted. However, it has not

⁵ Planning ref DM/0420/16/FUL

prevented me from forming a view on the appeal proposal. Concern has been raised regarding "Phase 2 of the Anita Grove development" and its affect on the security of the adjacent land. However, I have not been provided with details of this scheme or whether planning permission has been granted. Furthermore, I must determine the proposal on its own merits.

15. Concern has been raised that the omission of the fence would lead to children falling into the dyke. However, the occupiers of the dwellings alongside the dyke are aware of its presence as they are responsible for its maintenance, and it is located on the opposite side of an access road and therefore children would likely be supervised in this area. Furthermore, even if the fence was constructed, children could still fall into the dyke from the neighbouring land, or from the rear garden of No 7 which has a Lincolnshire post and rail fence to the boundary with the dyke and a similar concern was not raised in respect of this fence.

Conditions

16. The Council has provided a list of conditions which I have had regard to with respect to the tests for conditions set out within the Framework. I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions to ensure the development is constructed in accordance with details previously approved in respect of surface water drainage, highway construction, a Construction Management Plan, external materials, an Arboricultural Report and a landscaping scheme are necessary as the development has not been completed. A condition in respect of the implementation and future maintenance of the approved landscaping scheme is necessary to ensure the appearance of the development is acceptable.

Conclusion

17. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be allowed.

A Berry

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the following plans:

Proposed Boundary Treatments - 16-500-101 Rev D

The following plans approved under DM/0857/21/FUL:

- Site Location Plan and Block Plan - 16-500-100L
- Proposed Plans and Elevations for Plot 5 - 16-500-203H

The following plans approved under DM/0406/21/FUL:

- Proposed Plans and Elevations for Plot 7 - 16-500-205F

The following plans approved under DM/0308/20/FUL:

- Proposed Plans and Elevations for Plot 4 - 16-500-202D
- Proposed Plans and Elevations for Plot 6 - 16-500-204H

The following plans approved under DM/0420/16/FUL:

- 1567/001
- Proposed Drainage Plan - EWE/1987/01 Rev A
- Proposed Plans and Elevations for Plots 1 and 2 - 16-500-200 Rev A
- Proposed Plans and Elevations for Plot 3 - 16-500-201 Rev A
- Proposed Plans and Elevations for Garages - 16-500-206 Rev A

- 2) The development shall be built out in accordance with the surface water drainage details approved under DM/0235/17/CND.
- 3) The development shall be built out in accordance with the highway construction details approved under DM/0235/17/CND.
- 4) The development shall be built out in accordance with the Construction Management Plan approved under DM/0235/17/CND.
- 5) The development shall be built out in accordance with the external construction materials approved under DM/0235/17/CND.
- 6) The development shall proceed in accordance with the details and recommendations set out in the Arboricultural Report dated April 2016 as supplied in DM/0420/16/FUL.
- 7) The development shall be built out in accordance with the landscaping scheme approved under DM/0235/17/CND.
- 8) The scheme of landscaping and tree planting required through Condition 7 of this approval shall be completed within a period of 12 months, beginning with the date on which development began or within such longer period as may be first agreed in writing by the Local Planning Authority. All planting shall be adequately maintained for 5 years, beginning with the date of completion of the scheme and during that period all losses shall be replaced during the next planting season.

*****End of Conditions*****