



Appeal Decision

Site visit made on 12 October 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/V2635/W/23/3317433

Mulberry House, East End, Hilgay PE38 0JH

- 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 Mr Ben Saxby against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 22/00987/F, dated 1 June 2022, was refused by notice dated 21 November 2022.
 - The application sought planning permission for proposed 4-bed dwelling and triple garage with associated parking and private amenity space without complying with a condition attached to planning permission Ref 20/00198F, dated 18 June 2020.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans (Drawing Nos 2343-004 and 2343-002 received 2 June 2020, 2343-003 received 28 April 2020 and 2343-004 and 2343-005 received 10 February 2020).
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 23 October 2023.

Decision

1. The appeal is allowed and planning permission is granted for the proposed 4-bed dwelling and triple garage with associated parking and private amenity space at Mulberry House, East End, Hilgay PE38 0JH in accordance with application Ref 22/00987/F dated 1 June 2022 without compliance with condition No 2 previously imposed on planning permission Ref 20/00198F, dated 18 June 2020, but subject to the conditions set out in the attached schedule.

Background and Preliminary Matters

2. The address in the banner heading above has been taken from the appeal form as the postcode more accurately reflects the appeal site's address than the one given on the application form.
3. As part of the appeal submission, the appellant has put forward a landscaping drawing¹ that identifies the as-built land levels. As this does not alter the scheme that has been applied for and the Council has had the opportunity to

¹ Drawing no: 2343 007

provide final comments on this submission, I am satisfied that its consideration as part of this appeal would not prejudice third parties.

4. The application subject to this appeal is made under Section 73A of the Planning Act. The development appeared to be largely complete and has been carried out without complying with conditions subject to which planning permission was granted, and an application has been made retrospectively. The application sought to vary Condition No 2 (approved plans). The area of dispute relates to the approved plans referenced in Condition No 2 and the appellant seeks its replacement with a condition specifying the plans that reflect the amended design.

Main Issue

5. The Council refused this application due to the cumulative effect of the amended design on the character of the surrounding area. The main issue is therefore the effect of the variation of condition 2 on the character and appearance of the area.

Reasons

6. The appeal site is located on East End. As a result of the layout of the surrounding built form, it is located to the rear of properties to the west and south. To the north, beyond East End Road, it is further enclosed by residential development. On its eastern edge, it abuts mature hedging and vegetation with fields beyond.
7. There are a mixture of housing styles and designs found within the immediate area, albeit a prevailing characteristic is red brick and red roof tiles. There are also some modest topography changes, with dwellings to the south of the site being at a higher level. As a result, of the sloped verge to the north of the appeal site, this also gives the perception that the appeal site sits at a higher level.
8. Mulberry House is a substantially sized dwelling within a generously sized plot. Like many properties in the area, it is constructed in red brick with red roof tiles. It benefits from a large open driveway, a well-sized detached garage and a patio area. Additionally, there are raised planting areas that run around much of the periphery of the site and a large raised garden to the west.
9. During my site visit, I observed the as-built development from a number of public vantage points within the surrounding area. I am satisfied that the cumulative changes from the originally approved scheme² are sensitive and sympathetic to the character and appearance of the area for several reasons.
10. Firstly, the main dwelling is generally centralised within the site such that it is seen with other nearby dwellings. Even if I were to accept the Council's measurements, the additional height does not result in the building appearing overly dominant within the surrounding street scene or wider landscape. This is because the properties to the rear sit at a higher level which serves to soften the additional massing of the main dwelling to an acceptable level. This softening is further aided by the use of similar elevational and roofing materials to other nearby properties.

² Application Ref: 20/00198/F

11. Secondly, the garage, which is largely constructed of red tile and red brick, is set in from the site boundary. It is seen in glimpsed views from East End and nearby footpaths. However, existing boundary treatments of timber fencing, well-established trees, hedgerows, and the entrance gate largely obstruct views into the site. Where it can be glimpsed, the garage appears to sit low within the site and has an appropriately sized roof to match its form. Additionally, even if I were to accept the Council's taller and wider measurements, the step-up of the southern boundary treatments and the backdrop of adjoining dwellings serves to soften any visual impact of the garage through its increased height or width. Furthermore, the garage is a sufficient distance from the properties at the rear to avoid appearing visually dominant when looking outward from rear windows and gardens.
12. Finally, adjacent to but set back from East End by a sloping grass verge, a section of close boarded timber fencing has been erected. The alignment of the fence follows the road terminating adjacent to the brick entrance pillars and gate. At the time of my visit, the fence appeared weathered and was, in large parts, hidden behind a maturing row of shrubs forming a hedge.
13. The provision of this section of fencing is not out of keeping with local character. The fence is seen from many views in close proximity to a long section of close boarded fence on the same side of the road. However, incorporating planting has helped soften and create a more verdant boundary in keeping with properties on the opposite side of the road. As such, the introduction of the close boarded timber fencing and planting does not look inconsistent with its surroundings and other boundary treatments.
14. Taken as a whole, the extent of works, including land-level alterations and other minor alterations, are both sympathetic to the local setting and pattern of adjacent streets, including spaces between buildings as a result of high quality design and use of in keeping materials. Therefore, I find no conflict with Policy DM 15 of the Site Allocations And Development Management Policies Plan.

Other Matters

15. The Council and third parties have also raised concerns that the works have been undertaken without complying with the previously approved scheme. However, Planning Practice Guidance³ advises that a local planning authority can invite a retrospective application as the appropriate way forward to regularise the situation. Interested parties have had the opportunity to comment on the development. Additionally, there is no requirement for the appellant to demonstrate a need for the development.
16. I also acknowledge third-party comments on the incorporation of an acoustic fence. However, there is no substantive evidence before me to demonstrate that existing boundary treatments are not sufficient to prevent detrimental harm through noise or other nuisances. Additionally, no evidence has been supplied to demonstrate the proposal has given rise to an unacceptable number of vehicles using the road to the detriment of highway safety or that the additional built form has increased flood risk elsewhere.

³ Paragraph: 012 Reference ID: 17b-012-20140306 Revision date: 06 03 2014

17. Furthermore, from my observations on site, the development as built does not give rise to any detrimental impact through overlooking of nearby properties. This would match the Council's findings on this matter.

Conditions

18. This appeal grants a new planning permission. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has started, it is not necessary to impose a condition requiring commencement within a set period.
19. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance, as well as the appellant's comments in response. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
20. It is necessary to specify the amended list of approved drawings as this provides certainty and defines the permission.
21. The driveway/means of access had been built. However, for highway safety reasons, conditions are still required that it be retained in its current position, its design prevents water runoff, and no further gates or means of obstruction are placed closer to the highway. I see no reason why these are required to be separate conditions and have merged them into one condition. Given that the development is built and is on a minor slope, there is no requirement for a condition on its gradient.
22. As the Council have not confirmed conditions related to archaeological interests have been complied with, I reattached them in full. If some have in fact been discharged, that is a matter which can be addressed by the parties.
23. At the time of my visit, the air source heat pumps appeared to be installed and operational. I have therefore amended the Council's suggested condition to ensure the heat pumps are maintained in accordance with the agreed details in the interest of sustainable development.
24. As the dwelling is now occupied and the landscaping appears to have been carried out, I have amended the suggested wording. I have also reattached the condition that seeks the retention of identified existing trees, shrubs and hedges. Both conditions are necessary in the interests of the character and appearance of the area.

Conclusion

25. For the reasons given above, considering the development plan as a whole and all relevant material considerations, the appeal is allowed.

A Hickey

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 2343 001 Rev A, 2343 002, 2343 003 Rev A, 2343 004 Rev A, Proposed Section Plan and 2343 007.
- 2) The vehicular access over the verge shall be retained at the position shown on the approved plan and in accordance with the highways specification TRAD 5.

No other access gates / bollard / chain / or other means of obstruction shall be hung to open inwards without a minimum distance of 5 metres from the near channel edge of the adjacent carriageway. Any surface water drainage shall also be intercepted and disposed of separately so that it does not discharge from or onto the highway.

- 3) The development shall take place in accordance with the Written Scheme of Investigation submitted and agreed under application 20/00198/DISC A.
- 4) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under Condition 3.
- 5) Within three months of the date of this consent (unless otherwise agreed in writing by the Local Planning Authority) the site investigation and post investigation assessment shall be completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 3 and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.
- 6) The development hereby approved shall be maintained in accordance with the following details for the Air Source Heat Pumps:
 - Drawing No 2343 001 Rev A
 - Daiken Altherma 3 data sheet
 - H-Split (R32) heat pump data sheet
 - Flexi Foot Strut data sheet
- 7) All hard and soft landscape works shall be retained in accordance with the approved details. Any trees or plants that within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted.
- 8) No existing trees, shrubs or hedges within the site that are shown as being retained on the approved plans shall be felled, uprooted, willfully damaged or destroyed, cut back in any way or removed without the prior written approval of the Local Planning Authority. Any trees, shrubs or hedges removed without such approval or that die or become severely damaged or seriously diseased within 5 years from the completion of the development hereby permitted shall be replaced with trees, shrubs or hedge plants of a similar size and species in the next available planting season.

End