



Appeal Decision

Site visit made on 4 January 2024

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/X1355/W/23/3331579

High Croft Farm, Leasingthorne Lane, Kirk Merrington, Durham DL16 7JW

- 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 Wayne Baister against the decision of Durham County Council.
- The application Ref DM/22/02797/FPA, dated 23 September 2022, was refused by notice dated 21 July 2023.
- The development proposed was described as the *"demolition of the existing bungalow dwelling. Construction of detached two-storey family house with integral garage and sunken basement utilising the slope of the site to create embankment. External works to the existing garden, including creating new vehicular access from private drive of Eden Terrace"*.

Decision

1. The appeal is allowed and planning permission is granted for the *"demolition of the existing bungalow dwelling. Construction of detached two-storey family house with integral garage and sunken basement utilising the slope of the site to create embankment. External works to the existing garden, including creating new vehicular access from private drive of Eden Terrace"* at High Croft Farm, Leasingthorne Lane, Kirk Merrington, Durham, DL16 7JW in accordance with the terms of the application, Ref DM/22/02797/FPA, dated 23 September 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. This does not materially change the planning policy context in respect of the main issues, and I have determined the appeal accordingly.
3. As part of the appeal submission, the appellant has put forward a revised landscape strategy. However, I am mindful that the appeal process should not be used to evolve a scheme to overcome the Local Planning Authority's (LPA) reasons for refusal and instead a fresh planning application should usually be made¹. Whilst, in certain circumstances, a proposal can be amended through revised plans during an appeal, in line with the Wheatcroft principles², it is my view in this case that the appeal must be determined on the basis of the plans as originally submitted to the LPA and upon which it based its decision. To do otherwise would prejudice the interests of the LPA, interested third parties and consultees, who have not been consulted on the revised scheme and who may

¹ Annex M of the *Procedural Guide Planning Appeals – England* advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

² *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [JPL, 1982, P37]

have observations to make. I have therefore proceeded to determine the appeal on the basis of the landscape strategy plan as originally submitted.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

5. The appeal site is located on Leasingthorne Lane on the edge of Kirk Merrington village, on the brow of hill within an undulating landscape. The appeal site comprises a rendered bungalow with a small garden in the northeast corner and an area of steeply sloping grassed field. Beyond which is a tarmacked driveway serving two residential properties (High Croft Barn and The Stables) below the appeal site and detached from the main built-up extent of the village.
6. The bungalow is currently uninhabited, in a poor state of repair and the garden is overgrown and unkempt. It possesses little architectural merit and makes little or no contribution to the character and appearance of the site and its surroundings. The proposal involves its demolition and replacement with a two-storey stone-built dwelling with accommodation in a partially sunken basement. The remainder of the site would form a garden area for the proposed dwelling.
7. The replacement dwelling would be located in a similar location within the site to that of the existing bungalow, albeit, with a smaller footprint. It would be well related to other development close by. The scale and mass of the proposed development, due to the steep incline of Leasingthorne Lane on approach to the village and other two-storey dwellings on Eden Terrace, would not appear unduly prominent. Its appearance as a stone-built house, with gabled features, dormer windows and glazed elements would not appear incongruous or out of place in its village setting.
8. The area which would be used as a garden is large and would introduce a domesticated feature into the edge of a designated Area of Higher Landscape Value (AHLV). The field is currently open and does not form part of the garden associated with the existing dwelling on the site. Neither, however, does it appear to be being used in connection with any agricultural activity.
9. Although the proposed replacement dwelling would be visible in long range views from the south, it would not draw the eye to any great extent. It would be visible only as part of the general built-up mass of the village where the church tower is most prominent on the skyline. The dwelling would be well related to other built development and would assimilate into the built form of the village, in both scale and appearance. Furthermore, views of the appeal site on approach to the village from Leasingthorne Lane are restricted by high hedges. The dwelling and its garden would also be visible from footpaths surrounding the site, in particularly from Footpath 70 to the west, but this would be in the context of other built development, adjacent gardens and structures and paraphernalia within them, in particular a large pergola associated with High Croft Barn.
10. The development would therefore not appear alien or out of place in this context. The area is, in any event, clearly delineated by the tarmacked

driveway to High Croft Barn and The Stables and would extend no further westwards than the garden of The Paddock to the North. Furthermore, residential development predominates in this location and the garden would be viewed within the residential context of the dwelling and the village beyond. In that respect the development would not appear out of place in its surroundings when viewed in either long range views or in proximity to it.

11. I have not been presented with any substantive evidence that light spill from the development would be excessive, and in any event would be viewed in the context of residential properties both within the built-up extent of the village and those properties which are beyond at High Croft Barn and The Stables. Moreover, the installation of any external lighting could be controlled by way of an appropriately worded condition attached to a planning permission for the development.
12. Overall, the development would not appear discordant within the context of the setting of the village and would not be detrimental to the intrinsic beauty of the countryside here. It would sit within the residential surroundings and would preserve the wider character and landscape qualities of the AHLV. I therefore conclude that the proposal would not be detrimental to character and appearance of the site or its surrounding. It would not adversely affect longer range views or the wider countryside. Therefore, there would be no conflict with policies 6,10, 29 or 39 of the County Durham Plan (CDP), which amongst other things seek to ensure that development contributes positively to an area's character and landscape features and does not impact adversely on the setting or form of a settlement and the quality or distinctiveness of the landscape. I also find no conflict with parts 12 and 15 of the Framework in this respect.

Other Matters

13. I note that the Council did not refuse the application on grounds relating to its effect on the setting of the nearby Kirk Merrington Conservation Area, its effect on trees, the living conditions of the occupiers of nearby dwellings or on highway safety grounds. From all that I have seen and read, I agree, and these matters add weight to my conclusion set out above.

Conditions

14. I have carefully considered the conditions suggested by the Council in the light of the Framework and Planning Practice Guidance. I have undertaken some minor editing in the interests of precision and clarity to make a number of the proposed conditions more relevant to the case before me.
15. A plans condition is necessary in the interests of certainty and good planning. I agree too, that conditions requiring further details of landscaping and its implementation, materials and any external lighting would be necessary in the interests of the appearance of the area. Furthermore, a condition setting out the hours of demolition and construction work should be attached in the interests of the living conditions of the occupiers of nearby properties during the construction period.
16. Additionally, due to the nature and location of the site conditions relating to the remediation of any contamination found would be reasonable. As would it be necessary to impose a condition requiring details of foul and surface water

drainage in order to prevent flooding elsewhere. A condition requiring details of biodiversity net gain on the site and a requirement to implement the permission in accordance with the submitted ecology report are considered necessary in the interests of biodiversity and protected species. I have also imposed a condition requiring the property to be connected to broadband in accordance with Policy 27 of the CDP.

17. Although the council have suggested a condition relating to the provision of an electric vehicle charging facility, this is covered by other legislation. I have also not imposed a suggested condition relating to details of boundary treatments as this would duplicate the plans condition and landscaping plan. Both these conditions may not pass the tests of necessity and therefore not reasonable to impose.
18. Framework paragraph 54 is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The guidance states that such conditions may not pass the tests of reasonableness or necessity and should only be done in exceptional circumstances. In this case I consider that the removal of permitted development rights for further extension to the dwelling would not be reasonable however, it would be reasonable and necessary to impose a restriction on garages, garden sheds, outbuildings, greenhouses or swimming pools to ensure that the AHLV is not unduly affected by insensitive additions in accordance with Policy 39 of the CDP. I have not imposed the Council's suggested condition regarding the removal of permitted development rights with regard to obscured glazing as this would duplicate the plans condition and may not pass the tests of reasonableness or necessity.

Conclusion

19. For the reasons given above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed subject to the conditions set out in the schedule attached to this decision.

K L Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location Plan RES916-BHA-V1-ST-DR-A-0500 Rev P01;
Exiting Site Plan RES916-BHA-XX-ZZ-DRA-0510 Rev P01;
Proposed Site Plan RES916-BHA-XX-ZZ-DRA-1201 Rev P09;
Proposed Basement RES916-BHA-01-B1-DRA-1500 Rev P02;
Proposed Ground Floor Plan RES916-BHA-01-00-DRA-1501 Rev P03;
Proposed First Floor Plan RES916-BHA-01-01- DRA- 1502 Rev P03;
Proposed Building Elevations RES916-BHA-01-XX-DRA-1601 Rev P03;
Proposed Site Section A-A RES916-BHA-XX-ZZ-DRA-1310 Rev P01;
Proposed Site Section B-B RES916-BHA-XX-ZZ-DRA-1311 Rev P01.
- 3) No development shall commence until a land contamination scheme has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall be compliant with the YALPAG guidance and include a Phase 1 preliminary risk assessment (desk top study). If the Phase 1 assessment identifies that further investigation is required a Phase 2 site investigation shall be carried out, which shall include a sampling and analysis plan. If the Phase 2 identifies any unacceptable risks, a Phase 3 remediation strategy shall be produced and where necessary include gas protection measures and method of verification.
- 4) Remediation works shall be carried out in accordance with the approved remediation strategy. The development shall not be brought into use until such time a Phase 4 Verification report related to that part of the development has been submitted to and approved in writing by the Local Planning Authority.
- 5) No development shall commence until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall include details of the following:
Details of hard and soft landscaping including planting species, sizes, layout, densities, numbers, details of planting procedures or specification, the establishment maintenance regime, including watering, measures to protect from rabbits, tree stakes, guards etc; and a programme of implementation.
- 6) All planting, seeding or turfing and habitat creation in the approved details of the landscaping scheme shall be carried out in the first available planting season following the practical completion of the development. Any trees or plants which die, fail to flourish or are removed within a period of 5 years from the substantial completion of the development shall be replaced in the next planting season with others of similar size and species.
- 7) No development shall commence until a Defra Metric and Biodiversity Net Gain Assessment report, which includes details of habitat creation, enhancement and management for all species required to ensure a net gain in biodiversity, have been submitted to and approved in writing. The

landscaping habitat, creation and amount and type of habitats as detailed in the approved details shall thereafter be completed within the first available planting season following the development being brought into use and maintained for 30 years thereafter.

- 8) No development other than ground clearance or remediation works shall commence until a scheme for the provision of foul and surface water drainage works have been submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be completed in accordance with the details and timetable agreed.
- 9) Notwithstanding any details of materials submitted with the application, prior to the construction above damp proof course details of the make, colour and texture of all walling and roofing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- 10) Notwithstanding any details submitted with the application no windows, doors or rooflights shall be installed within the dwelling until details of the material, make, and colour finish have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- 11) Details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority prior to the development hereby permitted being brought into use. The detail provided shall demonstrate adherence to the ILP guidance notes for the reduction of intrusive light. The external lighting shall be erected and maintained in accordance with the approved details thereafter.
- 12) The development hereby approved shall not be occupied until such time as a scheme detailing the precise means of broadband connection to the site has been submitted to and agreed in writing by the local planning. Thereafter, the development shall be carried out in accordance with the agreed detail.
- 13) The development shall be undertaken in accordance with the recommendations and working methods and compensation detailed within Section G of the Bat Survey Report (E3 Ecology, September 2021).
- 14) No external construction works, works of demolition, deliveries, external running of plant and equipment shall take place other than between the hours of 0730 to 1800 on Monday to Friday and 0730 to 1400 on Saturday.
- 15) No internal works audible outside the site boundary shall take place on the site other than between the hours of 0730 to 1800 on Monday to Friday and 0800 to 1700 on Saturday.

No construction works or works of demolition whatsoever, including deliveries, external running of plant and equipment, internal works whether audible or not outside the site boundary, shall take place on Sundays, Public or Bank Holidays.

For the purposes of this condition, construction works are defined as: The carrying out of any building, civil engineering or engineering construction work involving the use of plant and machinery including hand tools.

- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and /or re-enacting that Order with or without modification) no garages, garden sheds, outbuildings, greenhouses or swimming pools, associated with the dwelling hereby permitted shall be undertaken.

****End of Schedule****