



Appeal Decision

Site visit made on 30 January 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2024

Appeal Ref: APP/K1128/W/23/3325984

Parklands, Bay View Estate, Stoke Fleming, Devon TQ6 0QX

- 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 without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr D Ferris against the decision of South Hams District Council.
 - The application Ref 3563/22/VAR, dated 27 October 2022, was refused by notice dated 18 January 2023.
 - The application sought planning permission for demolition of builders store and construction of two bungalows with garages without complying with a condition attached to planning permission Ref 3542/16/VAR, dated 7 November 2016.
 - The condition in dispute is No1 which states that: *The development hereby approved shall in all respects accord strictly with drawing number Bay View Plot 1.02 and the Site Location Plan received by the Local Planning Authority on 7th November 2016.*
 - The reason given for the condition is: *To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.*
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Decision

1. The appeal is allowed and planning permission is granted for demolition of builders store and construction of two bungalows at Parklands, Bay View Estate, Stoke Fleming, Devon TQ6 0QX in accordance with the application Ref 3563/22/VAR dated 27 October 2022, without compliance with condition number 1 previously imposed on planning permission 3542/16/VAR, dated 7 November 2016, but subject to the conditions in the attached schedule.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.

Background and Main Issue

3. Planning permission was granted for demolition of builders store and construction of two bungalows with garages under 51/2045/03/F on 8 December 2003. Following this, a planning permission to vary a number of conditions attached to that permission was granted under 3542/16/VAR on 19 January 2017.
4. The application is made under Section 73A of the Planning Act for minor material amendments to one of the bungalows approved in January 2017

(plot 1). This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks the variation of the plans condition that has already been breached. In that context, there is no dispute between the main parties that the appeal building has been built approximately 0.34m taller than its previously approved height.

5. Additionally, the appellant has indicated that the development proposed and already carried out is reflective of that shown on a plan that was not before the Council when it made its decision. The appellant states that a correction was made to the eaves to ground dimension which shows the difference of 5cm. The Council and interested parties have had an opportunity to comment on this revised plan Ref Parklands Dims 07 PMR7. I am satisfied that this plan does not involve substantial differences and that the proposed amendments would not cause procedural unfairness, particularly as the building has already been constructed.
6. At my visit, I observed differences between the proposed revised plan and what had already been built, including the positioning of rooflights. I have however assessed the proposed development as shown on the plans. Any differences between the plans and that built on site are a matter between the main parties.
7. The Council is concerned that the increased height of the development harmfully affects the outlook of the occupiers of a neighbouring property known as Formosa. In addition to this matter, 3rd parties are concerned with the effects of the development on their living conditions in respect of privacy and sunlight.
8. The appellant has had the opportunity to comment on these representations and therefore I consider the main issue to be the effect of the development on the living conditions of the occupiers of nearby properties, including Formosa, with particular regard to outlook, privacy and sunlight.

Reasons

9. The appeal site comprises a single storey property within a built up residential area. It is located downslope of Formosa and in close proximity to it. This property has accommodation on two levels. A first floor bedroom window within Formosa provides an outlook over the roof of the development. Although more expansive views from this window have been reduced by the presence of the development's roof, its ridge is nevertheless at a lower level when viewed from this window. At my visit, even if the appeal property has been raised on a plinth, I observed that long distance views above its roof top and either side of it were available.
10. This, together with the development's sloping pitched roof reduces the effect of the overall massing of the appeal property. Therefore, although plainly visible from the first floor bedroom window of Formosa, the development does not present as an incongruous or dominating roofscape. Even if this bedroom window were to be defined as a principal elevation and notwithstanding the close proximity between properties, the development's roofscape is not unduly prominent. As such, it does not appear out of scale with its surroundings.
11. Whilst the garage forms part of the overall length of the north elevation of the development, this is all at a lower level than Formosa. As such, it does not

generate an overbearing or dominating effect. The outlook from the ground floor windows of Formosa is consequently not harmed by the development. Additionally, other nearby properties are further away from the development. In that respect, the development's sloping roof and existing boundary screening avoid an overbearing presence of built form. As such, the enjoyment of private space of nearby occupiers is unlikely to be harmfully compromised by the development.

12. In respect of concerns raised in relation to privacy, the development includes a number of ground floor windows on its north elevation. These are close to the boundary with Formosa. Despite gaps in the boundary vegetation, these windows are however fitted with obscure glazing. This avoids any harmful effects relating to privacy between the appeal site and Formosa. Furthermore, the boundary treatment to the appeal site effectively screens ground floor windows from any harmful overlooking towards other nearby properties.
13. Additionally, whilst there are rooflights within the appeal property, the plans do not show any accommodation within the roof space. Furthermore, even if there was accommodation in the roof, these rooflights do not look out over nearby properties to a degree where harmful overlooking would result. In any case, restricted roof alterations that could otherwise be permitted development could be dealt with using an appropriately worded condition.
14. The occupiers of Formosa are concerned that the development blocks morning sunlight from their lounge, kitchen windows and garden. The presence of the development is likely to affect direct sunlight reaching various parts of the adjoining property at certain times of the day. Although the conditions were overcast at my lunchtime visit, I observed that the outlook from Formosa's ground floor and garden towards the appeal site was not gloomy. I therefore find it unlikely that the development harmfully affects levels of sunlight reaching Formosa. Moreover, I have been provided with no substantive evidence to demonstrate any harm in this regard.
15. Drawing these matters together, I conclude on the main issue that the development does not adversely affect the living conditions of the occupiers of nearby properties, including Formosa, with particular regard to outlook, privacy and sunlight. As such, it accords with Policy DEV1 of the Plymouth & South West Devon Joint Local Plan 2014-2034 March 2019 and Policy H3 of the Stoke Flemming Neighbourhood Plan 2018-2034 November 2018. Amongst other things, these policies seek to avoid negative impact on residential amenity by providing for satisfactory sunlight, outlook and privacy. There is also no conflict with paragraph 135 of the Framework which, in this respect says decisions should ensure developments function well and add to the overall quality of development in the area and create places with a high standard of amenity for existing and future users.

Other Matters

16. A number of 3rd party representations have been made. There are concerns that if the appeal were to be allowed, it would set an undesirable precedent. Even if planning applications were to be permitted by the Council and repeated within the immediate surrounding area, I find it unlikely the cumulative effect would be harmful. Furthermore, any such development would be assessed on its individual merits. In any case I have determined the appeal on the evidence before me and my own observations.

17. Additionally, property values are raised as a matter of concern. However, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be material considerations.
18. I have paid regard to the previous planning permission referenced 3542/16/VAR. I have however concluded that the development does not harmfully affect the living conditions of nearby occupiers in its own right. Whilst the fallback is a material consideration, I am satisfied that the appeal proposal is broadly similar to the already permitted scheme. As such, the quality of approved development is not materially diminished.

Conditions

19. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework.
20. I have varied the plans conditions showing the amended design that is the subject of this appeal. I have not imposed the Council's suggested floor level and ridge compliance condition as this part of the development has already been completed.
21. A condition requiring the provision of parking facilities prior to occupation is necessary to ensure that adequate off-street parking is provided.
22. The blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. It is necessary to remove permitted development rights for upwards extensions and roof alterations due to the close proximity of neighbouring properties. The removal of other freedoms to carry out minor alterations, as suggested by the Council, is not reasonable.
23. It has not been shown that the use of the loft space would harmfully affect the living conditions of neighbours or that accommodation within it would lead to a harmful intensity of use. As I have removed permitted development rights for roof alterations, any additional windows in the roof space would require planning permission. Therefore, a condition to control the use of the loft in the interests of the living conditions of neighbouring occupiers is not reasonable or necessary.
24. Compliance conditions in respect of surfacing, means of enclosure and obscure glazing are necessary in the interests of the living conditions of existing and future occupiers.
25. A contamination condition is required to ensure that any unexpected contamination that is uncovered during remediation or other site works is dealt with appropriately.

Conclusion

26. For the reasons set out above, the appeal is allowed.

J Hills

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall in all respects accord strictly with the submitted drawing identified as Parklands Dims 07 PMR7.
2. The parking facilities for motor vehicles shall be provided for the dwelling and site on plot 1 in accordance with the details shown on the approved drawings, and this dwelling shall not be occupied until such provision and vehicular access thereto have been provided. These facilities shall be kept permanently available for the parking of motor vehicles.
3. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) Order, 2015 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the local planning authority other than those expressly authorised by this permission: a) Part 1, Class AA (enlargement of a dwellinghouse by construction of additional storeys); and b) Part 1, Classes B and C (roof addition or alteration).
4. Prior to the occupation of plot 1 hereby approved, all hard surfacing and means of enclosure shall have been provided in accordance with the approved plans and thereafter so retained and maintained.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and reenacting this Order) the windows hereby approved on the north of the building shall be glazed in obscure glass, be fixed closed, and thereafter so maintained.
6. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted and obtained written approval from the local planning authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.

Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.