



Appeal Decision

Site visit made on 20 February 2024

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 March 2024

Appeal Ref: APP/W0734/W/23/3332494

63 The Grove, Marton, Middlesbrough TS7 8AL

- 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 Mousa against the decision of Middlesbrough Council.
 - The application Ref 21/1058/FUL, dated 15 November 2021, was refused by notice dated 12 July 2023.
 - The development proposed is proposed construction of 1no detached dwelling within the curtilage of 63 The Grove.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal is in a conservation area (CA), I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). In the period since the appeal was submitted, the Government published a revised version of the National Planning Policy Framework (the Framework). The main parties were invited to comment on any implications for the appeal of this change, and no prejudice would be caused by my consideration of it in the appeal.
3. The Council's fourth reason for refusal related to the absence of mitigation against nitrogen loading of the River Tees from future occupiers of the proposed development and the associated effects on the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar site (a European Designated Site). However, following correspondence from Natural England regarding the allocation of provisional nitrate credits for the scheme, the Council has withdrawn this reason for refusal. As I am the competent decision-making authority, the Council's updated position does not alter my duties under the Habitat Regulations¹ and I will return to this matter in the Other Matters section of my decision.

Main Issues

4. The main issues are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Marton Village and The Grove CA;
 - The effects of the proposed development on the living conditions of the occupiers of No 61C The Grove, with particular reference to outlook;

¹ The Conservation of Habitats and Species Regulations 2017 (The Habitats Regulations)

- The effects of the proposed development on the living conditions of the occupiers of No 63 The Grove, with particular reference to overlooking of the rear garden; and
- Whether the proposed development would increase the likelihood of flooding in the area.

Reasons

Conservation area

5. Housing along The Grove initially was developed in the early 20th century from the Bolckow Estate. The 1915 ordinance survey map shows the appeal property, and others, laid out in a distinctly linear arrangement with strongly defined building lines. These remain evident on the eastern side of The Grove where there is a strong building line from No 63 northwards and then a separate building line to the south, between Nos 61 and 53, where the properties are set further back.
6. In so far as it relates to this appeal, the significance of this part of the CA is derived from the surviving historical linear layout and building lines, the size, age and mix of early 20th century housing set within generous plots with extensive mature vegetation. These elements result in an attractive sylvan suburban environment that contributes positively to the character and appearance of the CA as a whole, and thereby to its significance as a designated heritage asset.
7. The subdivision of the plot, the introduction of an additional access gate, and the location of the proposed dwelling, set back in the plot would erode the historical linear layout and spaciousness along this part of The Grove. The removal of the tall red cedar tree, and the creation of an additional accessway through the front boundary vegetation, would also erode the contribution that these elements make to the sylvan character of the area.
8. The resulting plot widths would be similar to other semi-detached properties to the north on The Grove. However, the proposed dwelling would be a detached property, and its plot width would not harmonise with the historically more spacious plots to the south that contain detached dwellings.
9. My attention has been drawn to several properties that have been built to the rear of dwellings or as infill development. Full details of the circumstances that led to their existence are not before me. However, it is the three dwellings between Nos 63 and 61 The Grove, that are pertinent as to how the proposal would relate to on the eastern side of the road given the close proximity to the appeal site. These three properties (Nos 61A, B and C), with two properties to the front and one to the rear, are at odds with the historical linear pattern and spaciousness of housing in the Grove. In this regard, their arrangement does not justify a further erosion of elements that contribute to the significance of the heritage asset.
10. The absence of harm from other aspects of the scheme, including the architectural design of the dwelling and the retention of indigenous tree cover are neutral matters. The replacement of the red cedar tree with a native specimen would reduce the extent of harm. However, it would take a considerable time to establish and contribute aesthetically to the same degree or more than the existing tree. The proposed dwelling would not be visible from

most of The Grove, and where it would be seen, it would not be prominent due to its location set back within the plot. However, it would be highly visible in private views from neighbouring properties and within the plot. Accordingly, whilst these matters moderate the level of harm, there would still be harm.

11. Drawing the above together, I find that the proposed development would not preserve or enhance the character or appearance of the CA. This is contrary to the requirements of sections 72(1) of the Act.
12. Paragraph 205 of the Framework advises that great weight be given to the conservation of designated heritage assets (and the more important the asset, the greater the weight should be). Paragraph 206 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
13. With reference to paragraphs 207 and 208 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. In this instance, due to the location of the proposed dwelling to the rear, and as there are other examples of properties that depart from the historical linear and spacious layout of plots along this part of The Grove, the harm would be 'less than substantial' but, nevertheless, of great weight. Under such circumstances, paragraph 208 advises that this harm should be weighed against the public benefits of the proposal.
14. There would be social and economic benefits resulting from the construction works, spend from future occupiers, and the addition of a dwelling to the local housing stock in a sustainable location. There would also be environmental benefits from native tree planting. However, the nature and scale of the associated public benefits that would flow from the scheme to the public at large would be small. As such, the associated public benefits carry little weight in favour of the appeal.
15. Overall, the weight that I ascribe to the public benefits resulting from the proposed development, are not sufficient to outweigh the great weight that I attach to the harm I have identified. As such, the proposed development would not comply with paragraph 208 of the Framework. Accordingly, the proposed development would be contrary to the requirements of both the Act and the Framework in so far as they relate to this main issue. It follows, that it would also be contrary to the requirements of Policies DC1 and CS5 of the Council's Core Strategy (2008) and the guidance in its Urban Design Supplementary Planning Document (SPD), when taken together and in so far as they relate to this matter. These say, amongst other things, that all new development will be required to demonstrate a high quality of design in terms of layout, form and contribution to the character and appearance of the area.

Living conditions – No 61C The Grove (No 61C)

16. No 61C is a large, detached house with a long plan form. Most of the windows in the property would face away, or not directly at, the proposed dwelling. However, it would be highly visible from the conservatory, the habitable room leading off the conservatory and from upper floor windows.
17. From the upper floor windows, the combination of the elevated height of the rooms, the angle, and the distance, would mean that the proposed dwelling

would not be overtly dominant. At the ground floor the conservatory, and its attached room, benefit from windows with a southern aspect and, in the case of the conservatory to the south west as well. As such, due to the additional windows, the distance to the proposed dwelling, and the extent of retained boundary treatment, I find that the harm to the outlook from within the rooms would be minimal and a high standard of amenity would be maintained.

18. Due to the large size of the garden of No 61C, the proposal would be prominent from only a small section of its garden near the boundary. Overall, whilst it would be seen within various parts of the garden, the harm to outlook would be minimal and a high standard of amenity would be maintained.
19. I therefore find that the proposal would not have an unacceptable effect on the living conditions of No 61C with particular reference to outlook. As such, I find no conflict with the requirements of Policy DC1 of the Council's Core Strategy, the guidance within the SPD or paragraph 135 of the Framework. These say, amongst other things, that unless there is a specific and acceptable reason for an exception to be made, all development proposals will be required to take account of, or satisfy, several minimum principles. This includes ensuring that the effect upon the surrounding environment and amenities of occupiers of nearby properties will be minimal both during and after completion.

Living conditions – No 63 The Grove (No 63)

20. The front and rear windows of the proposed dwelling would be close to the newly defined rear garden of No 63. The application form indicates that the new boundary would comprise of, amongst other things, 6ft vertical timber fencing. This would ensure that views from the ground floor windows of the proposed dwelling would not directly overlook the rear garden of No 63.
21. There would be angled views from some of the first-floor bedroom windows to parts of the rear garden of No 63. However, there would be some private parts of the garden to the north of the proposed dwelling where no overlooking would occur. Moreover, this is a residential area that includes several semi-detached properties, and a certain degree of overlooking of gardens from upper floor windows is not unusual. Overall, the harm from overlooking of the rear garden would be minimal and a high standard of amenity would be provided.
22. I therefore find that the proposed development would not have an unacceptable effect on the living conditions of the occupiers of No 63, with particular reference to overlooking of the rear garden. As such, I find no conflict with the requirements of Policy DC1 of the Core Strategy, the guidance within the SPD or paragraph 135 of the Framework, when taken together and in so far as they relate to this main issue.

Flood risk

23. The appeal site is located within Flood Zone 3 according to the Environment Agency's published flood risk mapping. A Flood Risk Assessment (FRA) was submitted with the application and following further clarification during the application no objections were raised subject to conditions from the Environment Agency. The Local Lead Flood Authority (LLFA) also did not specifically object but sought clarification on the climate change allowance figures used in the FRA, drainage, and discharge points. Accordingly, the LLFA recommended conditions if the Council were minded to approve the application.

24. The appellant has clarified the climate change allowances used in the FRA in the appeal for the Peak River Flow and Peak Rainfall Intensity and I have no reason to question this information. Considering the level of detail before me, the final flood risk mitigation and drainage design could be reserved by way of conditions were I minded to allow the appeal. As such, safeguards can be put in place to ensure that there would be no demonstrable increase in flood risk.
25. I therefore find that the proposed development would not increase the likelihood of flooding in the area. Accordingly, I find no conflict with the requirements of Policies CS4 and DC1 of the CS or paragraph 173 of the Framework, when taken together and in so far as they relate to this main issue. These say, amongst other things, that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.

Other Matters

26. The appeal site falls within the catchment of the Teesmouth and Cleveland Coast European Designated Site, whose interest features include overwintering and passaging redshank and knot. The proposed development would result in an increase in the number of people living in proximity to this habitat site. In combination with other plans and projects, this is likely to have a significant effect on the habitat site through an increased nutrient load. As such, there is a need to ensure that new residential development, and any associated impacts on the European Designated Site, are compliant with the Habitat Regulations.
27. The appellant has agreed mitigation with Natural England to address this matter by way of provisional nitrogen credits and the Council have proposed a condition to secure this. As the competent decision-making authority, if I had been minded to allow the appeal it would have been necessary for me to complete an Appropriate Assessment for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Conclusion

28. To conclude, the proposed development would not have an unacceptable effect on the living conditions of the occupiers of No 63 and 61C and would not increase the likelihood of flooding in the area.
29. However, the proposed development would not preserve or enhance the character or appearance of the CA. Moreover, the weight that I ascribe to the public benefits resulting from the proposed development are not sufficient to outweigh the great weight that I attach to the harm I have identified. Having regard to the legitimate and well-established legislative and planning policy aim of the conservation and enhancement of the historic environment, a refusal of consent would therefore be proportionate and necessary.
30. The proposed development would conflict with the development plan as a whole and there are no material considerations which indicate that the decision should be made other than in accordance with it. Therefore, for the reasons given, the appeal is dismissed.

Mr R Walker

INSPECTOR