



## Appeal Decision

Site visit made on 2 April 2024

**by Elaine Moulton BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 1 May 2024**

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**Appeal Ref: APP/M1005/W/23/3332006**

**Pingle Cottage, 31 Milford Road, Duffield, Belper, Derbyshire DE56 4EL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Dr Alastair McCance against the decision of Amber Valley Borough Council.
  - The application Ref is AVA/2021/0786.
  - The application sought planning permission for detached two bedroom bungalow without complying with conditions attached to planning permission Ref AVA/2008/0036, dated 21 February 2008.
  - The conditions in dispute are Nos 2 and 5 which state that:
    - 2) *The living accommodation hereby approved shall be used as a self-contained unit of occupation, ancillary to the associated main household, and shall not be severed as an independent and unconnected residence.*
    - 5) *No work shall commence on the site until full details of the proposed treatment of the boundary(ies) of the site has been submitted to and approved by the local planning authority. Any agreed scheme shall be implemented in full in accordance with a phasing scheme prior to the occupation of the development.*
  - The reasons given for the conditions are:
    - 2) *This permission is given in view of the personal circumstances of the applicant. The creation of a dwelling independent of the main household would not normally be permitted on this site due to its relationship to existing dwellings and level of amenity provision in accordance with policies LS3 and H12 of the Adopted Amber Valley Borough Local Plan 2006.*
    - 5) *To ensure both the satisfactory appearance of the completed development and an adequate level of amenity for the proposed dwellings in accordance with policy H12 of the Adopted Amber Valley Borough Local Plan 2006.*
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### Decision

1. The appeal is allowed and planning permission is granted for detached two bedroom bungalow at Pingle Cottage, 31 Milford Road, Duffield, Belper, Derbyshire DE56 4EL in accordance with the application Ref AVA/2021/0786, without compliance with conditions attached to planning permission Ref AVA/2008/0036 dated 21 February 2008 and subject to the conditions set out in the attached Schedule.

### Applications for costs

2. An application for costs was made by Dr Alastair McCance against Amber Valley Borough Council. This application is the subject of a separate decision.

## **Preliminary Matters**

3. The Council has confirmed that the appeal site does not lie within Belper Parish. Consequently, the Belper Neighbourhood Plan, referred to within the decision notice, is not relevant to the proposal. I have determined the appeal on that basis.
4. The Government published a revised National Planning Policy Framework (the Framework) in December 2023. For the avoidance of doubt, where reference is made in this decision to paragraph numbers, they are taken from the latest version of the Framework.

## **Background and Main Issues**

5. Planning permission was granted in 2008 for a detached two-bedroom bungalow at the rear of 31 Milford Road, the host property. The permission was subject to several conditions, including condition 2 which requires that the bungalow remains as ancillary accommodation to the host property, and condition 5 requiring the approval and implementation of boundary treatments. The appellant wishes to remove condition 2 so that the bungalow can be occupied independently. A variation of condition 5 is also sought to reflect the existing and proposed boundary treatments.
6. The main issues are, therefore, the effect of the removal of condition 2 and variation of condition 5 on:
  - the character and appearance of the area; and
  - the living conditions of neighbouring occupants, with particular regard to noise and disturbance.

## **Reasons**

### *Character and appearance*

7. The host property is a two-storey mid terrace house within a predominantly residential area. The submitted plans show that the houses within the terrace have gardens of varying configuration and size, including small gardens. There is also a mix of boundary treatments within the wider terrace. This variation, and lack of consistency, contributes to the character and appearance of the area.
8. The garden of the host property is long, and widens towards the rear, extending behind the adjoining property, 29 Milford Road (No 29). The appeal site is bound by a mixture of walls, wooden fences, and hedges that are consistent in appearance with the boundary treatments within the wider area.
9. The bungalow is located towards the rear of the garden, on an upper patio area that is enclosed by a low wall. It is not evident in views from Milford Road and whilst it is visible from a public footpath that links Milford Road to St Alkmund's Close, such views are very limited.
10. The bungalow is not of a scale and appearance that is characteristic of the area. It is, however, already in situ and would be retained unaltered as part of the proposal. A subdivision of the plot to form separate gardens for the bungalow and the host property is proposed. This would involve the retention of the existing boundary treatments and the introduction of an additional

section of timber fence across the plot. The existing and proposed boundary treatments and the resultant garden areas would not be alien to, or out of proportion with, the varied character of the surrounding area. Additionally, whilst the occupation of the bungalow as a separate and independent dwelling would be likely to result in the presence of additional domestic paraphernalia, this would be limited in extent given the modest size of the dwelling and its proposed curtilage.

11. Consequently, given that the changes that would arise from the proposal would have a very limited and not unacceptable impact on the character and urban grain of the area, I find that it would not represent inappropriate backland development. Furthermore, for the same reasons, the use of the bungalow as an independent dwelling would not constitute overdevelopment of the plot.
12. Accordingly, I find that the removal of condition 2 and variation of condition 5 as proposed would not result in harm to the character and appearance of the area. I therefore find no conflict with Policy LS3 of the Amber Valley Borough Local Plan (LP), which seeks to ensure that development reflects the principles of good design by, amongst other things, respecting the character of the area. It would also achieve the design aims set out at paragraph 135 of the Framework.

#### *Living conditions*

13. Persons occupying the bungalow in compliance with condition 2, are likely to carry out some day-to-day activities in combination with the occupants of, and occasionally gain access through, the host dwelling. Nonetheless, the bungalow provides self-contained facilities that enable independent living. It is therefore reasonable to consider that access to such ancillary accommodation would be regularly gained using an existing pedestrian walkway that is shared by several properties.
14. No extension or alteration is proposed to the bungalow and, consequently, the number of occupants that it could accommodate would remain unchanged. Furthermore, there is no compelling evidence before me that demonstrates that the proposed use of the bungalow as an independent dwelling would lead to a material increase in the number of occupants, when compared to its existing use as ancillary accommodation, or to the associated level or intensity of activity.
15. The appeal proposal would result in the bungalow being accessed only using the pedestrian walkway. This would generate some additional comings and goings close to No 29, which contains a bedroom that extends over it. However, given the existing use of the shared walkway, including that associated with the use of the bungalow as ancillary accommodation, any uplift in pedestrian movements near No 29 would be very modest in number. In the context of a densely developed residential area adjoining a busy road, such additional activity would be unlikely to generate more noise than the existing use of the site to an extent where it would be detrimental to living conditions of adjoining residents.
16. Whilst not shared by the Council, concern has been expressed that the proposal would result in some loss of privacy to the occupants of the adjoining houses. However, the proposal does not involve the insertion of additional windows and the extent to which overlooking could take place would not,

therefore, be increased. Furthermore, the separation distance between the bungalow and the adjoining dwellings is sufficient to ensure that the living conditions of the surrounding neighbours would not be unacceptably harmed.

17. For these reasons, I find that the removal of condition 2 and variation of condition 5 as proposed would not harm the living conditions of neighbouring occupants. Accordingly, I find no conflict with LP Policy H12, which seeks to ensure that development reflects the principles of good design by, amongst other things, requiring that housing development does not unduly affect the amenities of adjoining or adjacent properties. It would also achieve the design aims set out at paragraph 135 of the Framework.

### **Other Matters**

18. It has been suggested that the bungalow has been used as a holiday let in breach of condition 2. Reference has also been made to the appellant seeking to make a profit from the proposal. However, these are matters that fall outside of the remit of this appeal and have had no bearing on my decision.
19. Concern has been expressed that there is no means of vehicular access to the site and no parking spaces are proposed. However, I have been presented with no substantive evidence that would lead me to disagree with the Council's conclusions in this regard, that the absence of off-street parking would not lead to highway safety issues.

### **Conditions**

20. Considering my findings, it is not necessary to comply with conditions 2 and 5 of the planning permission. I have therefore omitted condition 2 and have replaced condition 5 with one, that requires the approval of the details of the proposed boundary fence and its installation.
21. The Planning Practice Guidance (PPG) advises that where an application under section 73 of the Act is granted, the relevant conditions from the original planning permission should be repeated unless they have already been discharged.
22. The Council have not suggested the reimposition of condition 3 which requires the approval of materials for the external elevation and roof of the bungalow. I consider that the utilised materials are acceptable, and the appearance of the completed development is satisfactory, and as such I agree that the condition is no longer necessary.
23. The PPG indicates that permitted development rights should only be removed in exceptional circumstances. In this case, the removal of certain permitted development rights relating to extensions, including porches, alterations, boundary treatments and outbuildings is necessary in the interests of safeguarding the living conditions of the occupiers of the bungalow and the neighbours. This is to ensure that adequate garden space is retained and in recognition that an increase in accommodation could lead to a material, and unacceptable, increase in the number of occupants and associated noise and disturbance. Hence, I have reimposed such a condition, although I have made some amendments without changing its substance to avoid duplication of wording.

## **Conclusion**

24. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed, and a new planning permission is granted.

*Elaine Moulton*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following plans and other submitted details: Concept Drawing – Proposed site layout, block plan & location plan 002 Rev B.
- 2) The hereby approved development shall not be occupied until the boundary treatments, as set out within drawing no 002 Rev B are in place, full details of which shall be firstly agreed in writing by the local planning authority and shall thereafter remain in place for the lifetime of the development.
- 3) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 2015 (or any other revoking and re-enacting that Order) no development relating to Class A, B, C, D or E of Part 1 of Schedule 2 (erection of extensions; alterations to the roof; buildings incidental to the enjoyment of the dwelling house; the insertion, enlargement, improvement or replacement of windows or doors; erection or construction of a porch), or relating to Class A of Part 2 of Schedule 2 (erection of walls, fences, enclosures) shall be undertaken without the prior written approval of the local planning authority.

## **End of Schedule**