



Appeal Decision

Site visit made on 17 April 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 17th June 2024

Appeal Ref: APP/N4720/W/24/3338149

32 Walton Chase, Thorp Arch, Wetherby, Leeds LS23 7RA

- 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 Mrs L Hill against the decision of Leeds City Council.
 - The application Ref is 23/06616/FU.
 - The application sought planning permission for four 3 bedroom detached houses without complying with a condition attached to planning permission Ref 31/191/97/FU, dated 28 October 1997.
 - The condition in dispute is No2 which states that:
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any orders revoking or re-enacting that Order with or without modification) planning permission shall be obtained before any extensions are erected.
 - The reason given for the condition is: *As the Local Planning Authority wish to keep control over the erection of these buildings.*
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Decision

1. The appeal is allowed and planning permission is granted for four 3 bedroom detached houses at No 32 Walton Chase, Thorp Arch, Wetherby LS23 7RA in accordance with the application Ref 23/06616/FU, without compliance with the conditions previously imposed on the planning permission Ref 31/191/97/FU, dated 28 October 1997.

Background and Preliminary Matters

2. Whilst the appeal has been submitted for No 32 Walton Chase, planning permission Ref 31/191/97/FU, was for the construction of four houses. Therefore, as I am allowing the appeal, planning permission Ref 23/06616/FU without compliance with the conditions, extends to all four houses.
3. Planning permission was originally granted in 1995¹ for 47 dwellings on the Walton Chase estate. It is a small development of terraced, semi-detached and detached housing built in the same materials with similar design features. The original permission removed permitted development rights² (PD rights) for plots 5-27, a group of dwellings at the front of the estate. PD rights were not removed for plots 28-49 at the rear of the estate, where the appeal site is located.

¹ 31/289/94/FU

² Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)

4. Planning permissions³ were subsequently granted to enlarge the estate and amend parts of the original permission. These permissions removed PD rights. This included planning permission⁴ for four houses, Nos 26-32, which removed PD rights for extensions. The appellant contends that the removal of PD rights is not necessary or reasonable.

Main Issue

5. The main issue is whether the disputed condition is necessary and reasonable, having regard to the character and appearance of the area, the living conditions of neighbouring occupiers, the amenity space for future occupiers and on-site parking provision.

Reasons

6. The four detached houses, Nos 26-32, are built in a row in one corner of the estate, forming a small cul-de-sac. The houses are substantially similar except that No 26 has a detached garage to the front, in contrast to Nos 28-32 which have attached single garages to the side. The front gardens are small and open, whilst the moderately sized enclosed rear gardens extend to the edge of the estate and overlook a sports ground.
7. The National Planning Policy Framework (the Framework) states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 54 states that planning conditions should not be used to restrict PD rights unless there is a clear justification to do so. Furthermore, the Planning Practice Guidance states that 'conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO so that it is clear exactly which rights have been limited or withdrawn.
8. There is little substantiated evidence as to why PD rights were only removed on part of the estate at the time of the original permission. However, the Council suggest that the removal of PD rights on later permissions was to show a consistent approach, as well as rectifying the failure to do this on the original permission.
9. In this regard, the Council state that PD rights were removed for Nos 26-32 as the scheme increased the density of properties in that locality, and all four houses were of a uniform build. They consider that the disputed condition remains necessary to prevent harm to visual and residential amenity.
10. However, based on the evidence, including the plans and what I saw, the density of Nos 26-32 is not any greater than other parts of the estate. In fact, some areas have an increased density, with smaller gardens, and include properties which are sited in a random layout where overlooking, overdominance and loss of privacy are more likely. However, those properties have not had their PD rights removed, despite opportunities that may have arisen subsequently for the Council to have removed them.

³ 31/333/96/FU; 31/191/97/FU; 10/00492/FU

⁴ 31/191/97/FU

11. In contrast, Nos 26-32 are a discrete row of detached houses, with no properties to the rear and with only the blank side elevation and already overlooked rear garden of No 24 to the front.
12. The rear of No 32 is enclosed by its attached garage on one side, the side elevation of the garage of No 34 on the other side, and the sports field to the rear. The rears of Nos 26-30 are similarly enclosed. Therefore, any PD extensions would have limited visibility and would not result in unacceptable overlooking or loss of privacy which would harm the living conditions of neighbouring occupiers. In addition, there are limitations within the GPDO that would ensure rear extensions would not be overbearing and, even if these rights were fully exercised, a reasonable garden space would be retained.
13. As the GPDO places restrictions on extensions on the front of properties, the uniformity of the design of the houses would be retained and there is little evidence that the off-street parking would be lost. Therefore, the character and appearance of the area would not be harmed, and there would be no impact on highway safety. Furthermore, the appeal site is not located in a conservation area or similar sensitive location which may warrant the removal of PD rights.
14. I therefore conclude that the condition is not reasonable or necessary in the interests of the character and appearance of the area, the living conditions of neighbouring occupiers, the amenity space for future occupiers and on-site parking provision.

Other Matters

15. The parties have referred to other cases⁵ where the Council agreed that PD rights should not be restricted. However, these schemes are different and even though I am allowing this appeal, they do not provide justification for the proposal which I have considered on its own merits.

Conditions

16. The Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under Section 73 should reinstate conditions imposed on earlier permissions that continue to have effect. The original permission had three conditions. As the development has commenced and the properties are occupied, it is not necessary to impose condition 1, time limits. Condition 3 is no longer necessary as it was a pre-commencement condition. Condition 2 is the disputed condition and the reasons for removing this condition are given above.

Conclusion

17. For the reasons given above, I find that condition 2 is not reasonable nor necessary. It fails the tests for conditions set out in the Framework and the PPG. Therefore, I conclude that the appeal should be allowed and I have deleted condition 2 accordingly.

M J Francis

INSPECTOR

⁵ APP/N4720/A/03/1119676 and 22/02470/FU