



Appeal Decision

Site visit made on 4 September 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2024

Appeal Ref: APP/M2840/W/24/3340853

6 Old Dry Lane, Brigstock, Northamptonshire NN14 3HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mrs Barbara Lancaster against the decision of North Northamptonshire Council.
 - The application Ref NE/22/01605/VAR was approved on 26 October 2023 and planning permission was granted subject to conditions.
 - The development permitted is variation of condition 3 approved plans to allow for ground levels to be as per new drawings, pursuant to application NE/21/01858/FUL: Demolition of existing single storey dwelling and erection of single storey replacement dwelling, including parking and turning space.
 - The conditions in dispute are Nos 2, 6 and 7 which state that:
 - 2. The development (construction of a dwelling) shall be carried out and maintained in accordance with the materials details approved under condition discharge references: 22/00799/CND and 22/01152/CND and all materials shall be retained and maintained in accordance with the approved details in perpetuity.
 - 6. Within 6 months of the date of this consent, a solid and permanent boundary treatment (with no gaps or openings) measuring no less than 1.8 metres in height (measured from the existing ground level), shall have been erected along the eastern boundary of the site, extending for a minimum distance of 5.5 metres from the existing close boarded fencing close to the north eastern corner of the existing single storey detached outbuilding which is positioned to the south eastern corner of the site. The boundary treatment shall thereafter be retained in this manner in perpetuity.
 - 7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), there shall be no development within Classes A, AA, B, C, D or E of Part 1 of Schedule 2 or Part 2 of Schedule 2 Class A.
 - The reasons given for the conditions are:
 - 2. To ensure the satisfactory appearance of the completed development.
 - 6. In the interest of preserving neighbouring amenity while conforming to the established character and appearance of the area.
 - 7. To allow the Local Planning Authority to assess any changes to the property, and in the interests of neighbouring amenity and the character and appearance of the development and the wider area.
-

Decision

1. The appeal is allowed and the planning permission Ref NE/22/01605/VAR for Variation of condition 3 approved plans to allow for ground levels to be as per new drawings, pursuant to application ref NE/21/01858/FUL: Demolition of existing single storey dwelling and erection of single storey replacement dwelling, including parking and turning space, at 6 Old Dry Lane, Brigstock, Northamptonshire NN14 3HY granted on 26 October 2023 by North Northamptonshire Council, in accordance with the details submitted with it,

including the following drawings: Revised Block Plan ref VAR01; Revised Street Scene ref VAR02; Proposed Elevations 1 ref HPD01; Proposed Elevations 2 ref HPD02; Proposed Floor Plan ref HPD03; Typical Sections HPD04; View from Old Dry Lane ref HPD05; Views towards Old Dry Lane HPD06; and, Location Plan HPD09, is hereby varied by deleting conditions 6 and 7 and amending the wording of condition 2 to read as follows:

2 The development (construction of a dwelling) shall be carried out and maintained in accordance with the materials details approved under condition discharge references: 22/00799/CND and 22/01152/CND.

Applications for costs

2. An application of costs has been made by Mrs Barbara Lancaster against the Council. This is subject to a separate decision.

Preliminary Matters

3. At the time of my visit the bungalow was complete and occupied.

Background and Main Issues

4. Planning Permission was granted on the 23 February 2022, subject to conditions, for a detached bungalow ref NE/21/01858/FUL (the original scheme) at the appeal site. Following enforcement investigations, an amended scheme for the bungalow, ref NE/22/01605/VAR (the amended scheme), was submitted and has been granted, subject to conditions.
5. The amended scheme was submitted in response to concerns raised that the bungalow had been built higher than it had been approved on the original scheme and that in doing so, this had a potential harmful impact on the living conditions of the occupiers of neighbouring property and the character and appearance of the surrounding area.
6. The conditions in dispute include condition 2, which compared to the original scheme, additionally requires all the agreed materials to be retained and maintained in accordance with the approved details 'in perpetuity'. Conditions 6 and 7 are also disputed, which were not included on the original scheme's permission. Condition 6 requires an additional length of boundary treatment to be erected along the eastern/rear boundary of the site, and that it is thereafter retained in perpetuity. Condition 7 removes certain permitted development rights in respect of alterations to the bungalow, including extensions to the property and its roof, and the erection of means of enclosure, under Classes A, AA, B, C, D and E under Part 1 and Class A of Part 2, of Schedule 2 of the Town and Country Planning (General Permitted Development) (GPDO) (England) Order 2015, as amended.
7. The Council, in its statement of case, has revised its position in respect of condition 7, by omitting the requirement to remove Classes D and E of the GPDO. It also proposes that condition 6 is replaced with a condition requiring the submission of a detailed site-wide hard and soft landscaping scheme, the submission of a full landscape maintenance regime and that the landscaping is planted in the first planting season, then maintained in perpetuity, and the requirement that, if any tree and plants that die or are removed within a period of 5 years of planting, they are to be replaced. The reason given for this

proposed landscaping scheme condition is to ensure the development is satisfactorily assimilated into the area and enhances biodiversity.

8. The appellant considers the proposed replacement of condition 6 with the landscaping scheme condition is disproportionate in view of the size, scale, and location of the development, that the dwelling is complete, already landscaped and occupied and that, the condition does not specifically refer to boundary treatment and also requires the maintenance of the landscaping in perpetuity.
9. In respect of the Council's proposed revised wording of condition 7 (removal of householder permitted development rights), the appellant remains of the view that it is unnecessary to remove any permitted development rights, given the site context and effect on neighbouring occupiers.
10. The appellant seeks removal of the reference to 'in perpetuity' in condition 2 and removal of conditions 6 and 7 and does not agree to the Council's proposed changes to the conditions, as they consider such to be unnecessary and/or unreasonable.
11. In view of the above and the reasons for the conditions, the main issues in this appeal are:
 - whether conditions 2 and 7 are necessary and reasonable having regard to the effect of the development on the character and appearance of the site and surrounding area; and,
 - whether conditions 6 and 7 are necessary to protect the living conditions of the occupiers of 3 Fermyn Close, in particular regard to outlook and privacy.

Reasons

12. Paragraph 56 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) state that conditions should only be imposed where they are, necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and, reasonable in all other respects. The PPG furthermore sets out that each of the six tests needs to be satisfied for each condition.

Character and Appearance

13. No substantive evidence has been provided to demonstrate unequivocally that the amended scheme for the bungalow is discernibly different from the original scheme. In any case, the approved plans for the original scheme do not include details of the existing or proposed ground levels of the site and so, these details are not known. Also, no conditions were imposed on the original scheme in respect of the ground or finished floor levels of the bungalow and, the same plans for the bungalow are referenced as 'approved plans' on the original and amended scheme, with two additional plans approved under the amended scheme (VAR01 and VAR02), that include some additional information to explain the proposal.
14. As the siting, design, external appearance, and height of the new bungalow proposed in the amended scheme is not demonstrated to be discernibly different to that of the original scheme, no additional harm is caused to the character and appearance of the surrounding area by the amended scheme comparable to the original scheme. The appeal site is not within an area where there are any identified special protections in place for the design and

appearance of new buildings, and so, the removal of permitted development rights and the additional requirement of condition 2, that the development be retained and maintained in accordance with the agreed materials details 'in perpetuity', is not justified in regard to the protection of the character and appearance of the area.

15. Furthermore, to require the retention and maintenance of the materials of the bungalow beyond just the lifetime of the development itself, would place an unreasonable and disproportionate burden on the appellant and future occupiers of the bungalow.
16. In view of the above, it was neither necessary nor reasonable for the Council to include the additional requirement of condition 2 or impose condition 7, in the interests of protecting the character and appearance of the area. For the same reasons, I consider that the Council's proposed revised wording of condition 7, to slightly lessen the amount of permitted development rights removed, would also be unjustified and so, be unnecessary and unreasonable in terms of the Framework and PPG tests.

Living conditions

17. In view of my finding that the proposed amended scheme is not demonstrated to be discernibly different from the original scheme, it follows that the effect of the amended scheme on the living conditions of the occupiers of the neighbouring property is also not be discernibly different to that of the original scheme. Therefore, it is unnecessary and unreasonable to impose additional conditions 6 and 7 in the interests of preserving neighbouring amenity.
18. Additionally, the PPG advises that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require planning permission are unlikely to meet the tests of reasonableness and necessity.
19. Notwithstanding such, between the consideration of the original scheme and the amended scheme, the appeal site context changed, due to the removal of the tall rear boundary conifer hedge. The hedgerow removal opened up views of the appeal site from the rear and, as appreciated by the interested parties, created greater intervisibility between the appeal property and the neighbouring property at 3 Fermyn Close (No 3).
20. No 3 has an open post and rail fence along its rear boundary with an agricultural field beyond. While part of the rear boundary of the appeal site is shared with the side boundary of the rear garden of No 3, the appeal bungalow is located at an oblique angle to No 3 and is not located directly behind it. Therefore, there is no direct window to window overlooking caused between the two properties.
21. Even though the rear garden of No 3 and the appeal property are close to one another, I observed that due to the site context and features, overlooking to and from each of the respective rear garden spaces is limited. Such matters include, the staggered position of the gardens, an existing close boarded fence along the side rear garden boundary of No 3, an outbuilding within the appeal site, some existing planting within the corner of No 3's garden and the sparse hedgerow which remains within the rear garden of the appeal site.
22. In particular, overlooking into the neighbours' garden at No 3 from the appeal site is only possible at glimpsed views from certain parts of the rear garden

through the sparse low hedgerow, or when stood at the rear site boundary. It is only possible to see some areas at the bottom part of the rear garden of No 3 at an angle from such locations, which is only possible due to the open post and rail design of the rear boundary fence of No 3. This limited overlooking opportunity caused from garden to garden, does not cause undue loss of privacy to the occupiers of No 3 and so, does not justify the need for any additional boundary treatments along the rear of the appeal site.

23. Furthermore, the approved original scheme did not require the retention of the rear boundary hedge in order to protect the living conditions of the occupiers of No 3 and so, the appellant or subsequent occupier of the dwelling was not prevented from removing it at any time.
24. For the above reasons, the amended scheme does not have a harmful effect on the living conditions of neighbouring occupiers. Consequently, there is no conflict with Policy 8 e) of the NNJCS which, amongst other matters, seeks to ensure quality of life and healthier communities by protecting amenity, by requiring development to not result in an unacceptable impact on the amenities of future occupiers, neighbouring properties, or the wider area, by reason of noise, vibration, smell, light or other pollution, loss of light or overlooking.

Other Matters

25. The further new bungalow recently built adjacent to the appeal site has a higher rear boundary hedge than that at the appeal site, which, as asserted by the occupiers of No 3, the Council have conditioned should be maintained at a height of 1.8 metres. However, in the context of the open rear boundary fence at No 3 and my findings on the main issues, I do not consider it is necessary or reasonable to retain the disputed conditions.
26. The Council's proposed revised condition requiring hard and soft landscaping details to be submitted and agreed, while not necessary to protect the character and appearance of the surrounding area or the living conditions of neighbouring occupier, would place overly onerous requirements on the appellant. Additionally, the reason given for the proposed condition is to ensure the development is satisfactorily assimilated into the area and enhances biodiversity. No biodiversity issues were identified in the original scheme that was approved and from my observations the development, as built, assimilates well into the surrounding area. Therefore, the reasons for the proposed updated condition are unnecessary and unreasonable.
27. Additionally, the landscape condition requires a significant amount of information to be provided, which would not be commensurate to the scale and context of the appeal scheme. Also, as the bungalow is now complete and occupied, with substantial hard and soft landscaping around it already, and that the condition relates to more than just the boundary treatment of the appeal site, and requires the landscaping be maintained in perpetuity, such condition would not be justified nor reasonable.

Conditions

28. As this permission relates to the approved amended scheme, the time limit condition applicable thereto remains unaltered. Also, other undisputed conditions are unaltered.

Conclusion

29. For the reasons given above, I conclude that the appeal should be allowed and the planning permission varied, as set out in my formal decision.

C Billings

INSPECTOR