

Appeal Decision

Site visit made on 1 October 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2024

Appeal Ref: APP/Y2003/W/24/3348642

120 High Street, Epworth, North Lincolnshire DN9 1JS

- 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 Mr Anthony Ash against the decision of North Lincolnshire Council.
 - The application Ref is PA/2023/1365.
 - The application sought planning permission to erect a detached dwelling with new access from Tottermire Lane and the demolition of an existing garage with a new access from High Street to the existing dwelling at 120 High Street, Epworth, DN9 1JS without complying with a condition attached to planning permission Ref PA/2021/2119, dated 15/02/2022.
 - The condition in dispute is No 2 which states:
The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan & Existing Block Plan - DWG No. DRWG/PA/2021/2219/01; Proposed Site Layout Plan & Street Scene - DWG No. 109/21/1A; Elevations & Floor Plans - DWG No. 109/21/2.
 - The reason given for the condition is:
For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission¹ was granted to subdivide the rear garden of 120 High Street and construct a detached dwelling with an access from Tottermire Lane. The existing garage adjacent to No 120 would be demolished and a new access constructed from High Street to serve No 120.
3. At the time of my site visit, the existing garage at No 120 had been demolished and a new access created onto High Street, and a close boarded fence subdivided the appeal site from No 120. As such, the previously approved scheme had commenced.

¹ Planning Ref PA/2021/2119

4. The appellant asserts that the approved dwelling cannot be constructed as a public sewer runs along the eastern corner of the site and an easement prevents any built development in this location.
5. Consequently, the appellant seeks to vary Condition 2 of the planning permission ("the approved plans") to re-locate the proposed dwelling further back within the appeal site and angled to follow the boundary shared with 29 Tottermire Lane rather than fronting Tottermire Lane. The dwelling's design would also change from a double fronted two-storey dwelling with relatively small windows, to a 1.5-storey dwelling with dormer windows either side of a 1.5-storey central glazed atrium to the front elevation.
6. Accordingly, the main issues are the effect of the proposal on:
 - a) the living conditions of the occupiers of existing neighbouring properties, with particular reference to privacy, light and outlook;
 - b) the living conditions of future occupiers, with particular reference to garden amenity space; and
 - c) the character and appearance of the surrounding area.

Reasons

Living Conditions – Occupiers of Neighbouring Properties

7. The windows/rooflights within the rear elevation of the proposed dwelling would serve rooms that would be less frequently used or would be secondary windows. Therefore, they could be obscure glazed and fixed or set a minimum height above the internal floor level to prevent overlooking of 29 Tottermire Lane. The ground floor windows that would overlook No 120 would be largely obscured by the existing boundary fence. Consequently, I do not accept the Council's findings that the proposal would harm the privacy of the occupiers of these neighbouring properties.
8. The proposed dwelling would be to the east/north east of No 120 and to the west/north west of No 29. Accordingly, there would likely be some overshadowing of these property's gardens. Although the appellant has not submitted a sunlight/shadow path assessment, any overshadowing would be for a limited time and would be alleviated somewhat by the 1.5-storey design of the proposed dwelling. Therefore, the loss of sunlight to the gardens of the neighbouring properties would not be unduly harmful.
9. The ground floor windows within the rear of No 120 are largely obscured by an existing close boarded boundary fence and would not directly face the proposed dwelling. While the proposed dwelling would be in proximity of No 120, it would not be so close that its outlook would be unduly affected.
10. No 29 has windows that face towards the appeal site that the Council assert serve rooms that are more frequently used. I have nothing before me to come to a different view. The windows are highly visible above the existing close boarded fence. Even with a 1.5-storey design, the proximity of the proposed dwelling to these windows would result in an overbearing and oppressive outlook for the occupiers of No 29 and would likely result in a loss of light to these windows.

11. In reference to the first main issue, the proposal would harm the living conditions of the occupiers of No 29 with regard to light and outlook. Accordingly, the proposal would conflict with Policies DS1 and H5 of the North Lincolnshire Local Plan including Policies for Minerals and Waste, adopted 2003 ("LP") and Policy CS5 of the North Lincolnshire Local Development Framework Core Strategy, adopted 2011 ("CS") which, amongst other things, seeks to ensure development does not result in overlooking or a loss of privacy to existing developments, or any other loss of amenity to existing dwellings. It would also conflict with Section 12 of the National Planning Policy Framework ("the Framework") that seeks to create places with a high standard of amenity for existing users.

Living Conditions – Future Occupiers

12. The appellant asserts that the garden areas, excluding the parking/turning area and footways, would measure circa 90sqm. This would provide sufficient space for normal domestic activities such as the drying of clothes, the playing of children and the siting of a table and chairs.
13. However, the garden to the side of the proposed dwelling would be relatively narrow and bounded by the gable wall of the proposed dwelling and the existing close boarded fences, creating a narrow, enclosed space. Furthermore, the garden area to the front of the proposed dwelling would not be private as it would be adjacent to the road and visitors would walk through it to reach the proposed dwelling's front door. Consequently, the garden areas would be of poor quality.
14. In reference to the second main issue, the proposal would harm the living conditions of future occupiers, with particular reference to garden amenity space. It would conflict with Policy H5 of the LP which, amongst other things, seeks to ensure that provision is made within the curtilage of each dwelling for an area of private amenity open space. The proposal would also conflict with Section 12 of the Framework that seeks to create places with a high standard of amenity for future users.

Character and Appearance

15. Tottermire Lane is a predominantly residential street. The dwellings are mixed in their age, height and appearance. Consequently, I do not find that the 1.5-storey appearance of the proposed dwelling would harm the character and appearance of the surrounding area.
16. However, the dwellings along Tottermire Lane all face towards the road and while gardens vary in their size and shape, private amenity space is typically located to the rear. In contrast, the proposed dwelling would be sited at an angle to the road and positioned towards the rear of the plot. The majority of the proposal's garden would be located between the principal elevation of the proposed dwelling and the road. Consequently, the proposal would appear incongruent and out of character with its surroundings.
17. I accept that permission has already been granted for a detached dwelling on the appeal site. However, the proposed dwelling would have a larger footprint than the previously approved dwelling and would occupy a large proportion of the site. Furthermore, the largest part of the garden would be

to the front of the dwelling due to the contrived siting of the proposed dwelling. Consequently, the proposal would appear cramped and comprise an overdevelopment of the plot.

18. In reference to the third main issue, the proposal would harm the character and appearance of the surrounding area. It would conflict with Policies DS1 and H5 of the LP and Policy CS5 of the CS which, amongst other things, require the design and external appearance of a proposal to reflect or enhance the character, appearance and setting of the immediate area; and the scale, layout, height and materials of the development are in keeping and compatible with the character and amenity of the immediate environment. It would also conflict with Section 12 of the Framework that seeks to achieve well-designed and beautiful places.

Other Matters

19. I acknowledge the appellant's reason for re-siting the approved dwelling within the appeal site and amending its scale and appearance. I also note the appellant's intention for the proposed dwelling to accommodate their parents. However, I am not persuaded that a less harmful dwelling could not be designed that would accord with the public sewer easement.
20. It is unfortunate that Severn Trent Water was not more explicit in their consultation response to the previously approved scheme. However, this does not prevent me from determining the appeal.

Conclusion

21. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be dismissed.

A Berry

INSPECTOR