
Appeal Decision

Site visit made on 13 March 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 April 2025

Appeal Ref: APP/V0510/W/24/3351133

Land North of 22 Canute Crescent, Ely, Cambridgeshire CB6 1BU

- 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 V Bielskis of Monaso Developments Limited against the decision of East Cambridgeshire District Council.
 - The application Ref is 24/00392/VAR.
 - The application sought planning permission for 1 no. detached bungalow with new access from Orchard Estate/Lynn Road without complying with a condition attached to planning permission Ref 21/01691/FUL, dated 5 May 2022.
 - The condition in dispute is No 1 which states that:
Development shall be carried out in accordance with the drawings and documents listed below

Plan Reference	Version No	Date Received
D92-21-46-DR-A-012	P5	31st March 2022
Ecological Impact Assessment		25th November 2021
Flood Map		25th November 2021
Arboricultural Impact Assessment		25th November 2021
Tree Survey		25th November 2021
Tree Constraints		25th November 2021
Tree Survey Schedule		25th November 2021
D92-21-46-DR-A-010	P2	25th November 2021
D92-21-46-DR-A-011	P2	25th November 2021
D92-21-46-DR-A-013	P2	25th November 2021
 - The reason given for the condition is: To define the scope and extent of this permission.
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Decision

- The appeal is dismissed.

Preliminary Matters

- A revised National Planning Policy Framework (the Framework) was published in December 2024. There were no significant changes to the policies of the Framework most relevant to the appeal. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.

Background and Main Issue

- Planning permission was originally granted for the erection of a bungalow with a new access in May 2022 (Council ref: 21/01691/FUL) (original permission). I saw in my site visit that development has commenced. The appeal proposal seeks to address the concerns associated with an application for permission to vary condition 1 of the original permission under section 73 of the Town and Country

Planning Act 1990 (as amended) refused by the Council in 2023 (Council ref: 23/00117/VAR).

4. Condition 11 of the original permission removes a range of permitted development rights¹ including in relation to Class A - the enlargement, improvement or other alteration of a dwellinghouse, Class B – addition etc to the roof of a dwellinghouse and Class C – other alterations to the roof of a dwellinghouse. The reason given for this condition is to safeguard the amenity of neighbouring occupiers.
5. The appellants seeks to vary Condition 1, to amend the approved plans to add a bedroom and en-suite bathroom in the roof space of the bungalow. The amended drawings also include the addition of a front gable window, three roof lights and solar panels. The Council's concerns relate to the front gable window.
6. Accordingly, the main issue is the effect of varying Condition 1 to allow for the proposed front gable window, on the living conditions of the occupiers of 22 Canute Crescent (No 22) with particular regard to privacy.

Reasons

7. Canute Crescent is a curving cul-de-sac. Due to the single storey nature of bungalows along Canute Crescent, their occupiers, including the occupiers of No 22 are afforded high levels of privacy.
8. The appeal site is located adjacent to Canute Crescent although its main access is via Orchard Estate/Lunn Road. Whilst No 22 sits alongside although set back slightly from the frontage of the appeal bungalow, its frontage faces towards Canute Crescent unlike the front of the appeal bungalow which faces towards Orchard Estate/Lynn Road. No 22's rear garden therefore sits alongside the front garden/driveway serving the appeal bungalow.
9. The proposed front gable window would occupy a slightly off-centre and recessed position and would face directly towards Orchard Estate/Lynn Road. It would consist of fixed glass with an opening top light. Its orientation and height, combined with the limited separation distance to the shared boundary with No 22 would allow for direct views of a part of No 22's rear garden area, including an outdoor seating area.
10. Views towards habitable room windows in the rear of No 22 would not be achievable. Furthermore views, particularly those within a 45-degree angle from the centre of the front gable window would be oblique given that it would be and partially non-opening. Even so, my observations on site confirmed that the majority of the rear garden of No 22, including its more peripheral parts, are likely to be used by its occupiers on a regular basis given its modest size. Whilst a degree of overlooking is often expected in residential areas, the high levels of existing privacy afforded to the occupiers of No 22 due to its positioning between bungalows means that the introduction of the front gable window would result in a significant loss of privacy to the occupiers of No 22.
11. I conclude that varying the Condition 1, to allow for the proposed front gable window, would result in a harmful effect on the occupiers of No 22 with particular regard to privacy. In this regard, it would conflict with Policy ENV 2 of the East

¹ Class A, B and C of Part 1 (Development within the curtilage of a dwellinghouse) of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

Cambridgeshire Local Plan April 2015 (as amended 2023) which expects new development proposals to ensure there is no significantly detrimental effect on the residential amenity of nearby occupiers. The proposed development would also conflict with Paragraph 135 of the Framework required planning decisions to create places with a high standard of amenity for existing and future users.

Other Matters

12. There is no dispute between main parties that the proposal would provide an additional bedroom and improve energy efficiency, making a small but beneficial contribution to the effective use of land and choice of homes in the area; as well as providing social, environmental and economic benefits during construction and after occupation. However, given the small scale of the development, the benefits would be limited and would not justify the harm I have identified.
13. My attention has been drawn to a loft conversion and the insertion of roof lights at 7 Canute Crescent. However, this dwelling does not share the same characteristics as the appeal site as it proposed the insertion of roof lights only. Furthermore, the full circumstances that led to the Inspector's decision to allow an appeal (Appeal Ref: APP/R3650/D/24/3341637) are unknown. It is also acknowledged greater levels of overlooking may occur in some parts of the surrounding area, including on Williams Close. However, none of these examples alter my conclusions with respect to the main issue having regard to the site-specific factors in this case.
14. The appellant also refers to planning matters where the Council has not identified harm, including in relation to visual amenity and trees. However, these matters are neutral factors and do not alter my findings on this appeal.
15. An interested party has queried whether the appellant is entitled to vary the plans, given the description of development is a bungalow. An application under section 73 of the Town and Country Planning Act 1990 (as amended) cannot be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, which would include, the description of the development for which the original permission was granted. Given that I am dismissing the appeal, it has not been necessary to consider this matter further.

Conclusion

16. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR