The Planning Inspectorate

Appeal Decision

Site visit made on 24 April 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th May 2023

Appeal Ref: APP/A2525/W/22/3309266
47 Low Lane, Holbeach, Spalding PE12 7PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Messrs D and A Rulewski against the decision of South Holland District Council.
- The application Ref H09-1094-21, dated 19 October 2021, was refused by notice dated 25 May 2022.
- The development proposed is erection of four detached dwellings, one detached garage and demolition of existing bungalow.

Decision

1. The appeal is allowed and planning permission is granted for the erection of four detached dwellings, one detached garage and demolition of existing bungalow at 47 Low Lane, Holbeach, Spalding PE12 7PW in accordance with the terms of the application, Ref H09-1094-21, dated 19 October 2021, subject to the conditions listed at the end of this Decision.

Applications for costs

2. An application for costs was made by Messrs D and A Rulewski against South Holland District Council. That application is the subject of a separate Decision.

Preliminary Matter

3. The Council first issued a Decision Notice on 14 March 2022. However, this was subsequently quashed by order of the High Court. A corrected Decision Notice, that relies on the reason for refusing planning permission that was put forward by members of the Council's Planning Committee, was subsequently re-issued on 25 May 2022. I shall formulate the appeal's Main Issue accordingly.

Main Issue

4. The effect upon the living conditions of neighbouring occupiers at The Chestnuts, having particular regard to access to daylight and sunlight.

Reasons

5. The site contains a single existing bungalow and is formed of an expansive and predominantly grassed plot. An established hedgerow comprised of tall conifer trees runs along the southern and eastern boundaries. This hedgerow sits adjacent to a group of mature conifer trees in place to the site's south-western part (the tree group). The Chestnuts, a large two-storey dwelling served by a south-facing rear garden, is situated immediately west of the site.

6. The westernmost proposed dwelling (Plot 1) and its relationship with The Chestnuts forms the focus of the Council's reason for refusing planning permission. This is based on an alleged unacceptable loss of daylight and sunlight due to the design, scale and position of Plot 1, which would rise to a height of two full storeys. At its eastern end, and thus in immediate proximity to the site, The Chestnuts contains a study at ground floor and a large dual aspect living room at first floor. In addition, there are other openings positioned within the south-facing façade that also serve habitable rooms.

7. If a 45-degree line were drawn (on both plan and elevation) from the centre of the ground floor study window of The Chestnuts, it would be intersected by Plot 1. This indicates that a significant amount of light would likely be blocked from reaching the study, which can, notwithstanding its modest size, be rightfully considered a habitable room. It is also fair to predict that a not insignificant amount of light would likely be blocked from entering the first floor living room. Nevertheless, the 45-degree rule serves merely as an initial rule of thumb. Other methodologies offer more detailed means of calculating any loss of daylight or sunlight.

8. A Daylight, Sunlight and Overshadowing Study[1] (the appellants' Study) has been produced whereby various tests endorsed by relevant Building Research Establishment (BRE) guidance[2] in place at that time were undertaken in the interests of seeking to demonstrate no adverse material impact on the occupiers of The Chestnuts. These tests included an assessment of Vertical Sky Component, whereby the amount of visible sky available from individual window openings was calculated; an assessment of Daylight Distribution/No Sky Line, whereby the availability of direct views of the sky was considered; an assessment of Annual Probable Sunlight Hours, whereby statistically probable percentages of sunlight hours received by relevant openings were calculated; and an assessment of sun on the ground, whereby a calculation of the percentage of the external amenity area able to receive at least two hours sunlight was undertaken.

9. The appellants' Study, which factors in the intended removal of the tree group in its calculations, and which is comprehensive in terms of its assessments of south-facing openings, indicates that the proposal would pass each of the tests carried out and that there would be no adverse material impact upon the occupiers of The Chestnuts.

10. Subsequent to the submissions of the appellants' Study and a further planning application[3] for four detached dwellings at the site involving an alteration to Plot 1's roof form, the Council commissioned BRE to evaluate the scope and methodology, text and conclusions of supporting material that included the appellants' Study (albeit in a revised format to align with the latest planning application). The BRE Client Report produced, whilst dismissive of the relevance of some analysis carried out, sets out that the rear façade and internal layout would appear to have been correctly considered and that it was reasonable to account for the tree group in calculations due to it forming an opaque obstruction that, I note, would take a very long time to re-establish to a similar height if replanted. It is also indicated that the results of the various assessments pinpointed at Paragraph 8 above are appropriate to consider.

[1] dated 6 October 2021
[2] Site Layout Planning for Daylight and Sunlight - a guide to good practice (Second Edition, 2011)
[3] Ref H09-0575-22

11. I accept that BRE guidelines, whilst material to my considerations, are not mandatory and are designed to be interpreted flexibly, and that individual site circumstances shall vary. For example, the dual aspect living room is of particularly large size and unusually afforded window openings to both the front and rear. I also accept that, due to the orientation of the site, Plot 1 would inevitably obstruct some sunlight in the early mornings. However, having undertaken my own inspections both internally and externally and considered all related evidence before me, I am content that no unacceptable loss of sunlight or daylight would occur for the occupiers of The Chestnuts.

12. My attention has been drawn to a 2020 planning application[4] at the site for residential development where, during the course of its determination, multiple amendments were negotiated. Indeed, the two-storey bulk of the closest proposed dwelling to The Chestnuts was setback from the shared boundary. However, notwithstanding the detailed considerations of Council Officers at that time, any proposal for development must be considered upon its own individual merits at the point in time of its determination. As such, past negotiations undertaken with respect to a different scheme of development are of limited relevance to my considerations.

13. Various other schemes at different sites in the local area are made mention of within the submitted evidence. However, no such scheme/site shares precisely the same characteristics as the appeal scheme/site. Moreover, the other cases and any associated permissions referred to are of limited direct relevance to my considerations.

14. For the above reasons, having particular regard to access to daylight and sunlight, the proposal would have an acceptable effect upon the living conditions of neighbouring occupiers at The Chestnuts. The scheme satisfactorily accords with Policies 2 and 3 of the South East Lincolnshire Local Plan 2011-2036 (adopted March 2019) and the National Planning Policy Framework (July 2021) (the Framework) in so far as these policies require development proposals to demonstrate how residential amenity will be secured.

Other Matters

15. It has been put to me, including by the Council at appeal stage, that Plot 1 would be overbearing and obtrusive when viewed from within the private garden of The Chestnuts (the rear garden) and from within nearest habitable rooms. Whilst a tall gable wall would address the rear garden for a not insignificant length, it would do so along only a part of the rear garden's eastern edge. Moreover, the rear garden covers a large area and is of often open composition to its fringes. In this context, whilst Plot 1 would be easily seen, I cannot find that it would be experienced as unduly overbearing or result in an unacceptable loss of outlook for users of the rear garden. Further, owing to its oblique positioning relative to the various south-facing window openings of The Chestnuts, nor would Plot 1 lead to an unacceptable loss of outlook from internal areas of this neighbouring property.

16. I accept that eastward views from the rear garden are currently heavily influenced by existing planting, which includes the tree group and a short row of fruit trees in place along the appeal site's western boundary. Although these soft planted features would be lost as part of the proposal, it must be noted

[4] Ref H09-0801-20

that they are not protected and could be removed at any time without planning permission. Moreover, whilst the proposal would undoubtedly influence outward views from the rear garden, any change in this sense would not equate to unacceptable planning harm.

17. The potential for privacy to be lost due to the possible availability of views over the rear garden from the proposed utility room entrance to Plot 1 has been raised. However, such possible views would be limited in scope and confirmation of intended boundary treatments (to include fencing levels, heights and materials) could be secured via condition in the event the appeal be successful. When considered in conjunction with the planned installation of obscure-glazed west-facing window openings (also securable via condition), I am satisfied that neighbouring privacy would be suitably safeguarded. There is also no clear reason to find that, any undue noise or disturbance to the area would be caused via the introduction of dwellinghouses to a residential area. This is notwithstanding the sometimes close physical relationships proposed.

18. A shared area of driveway intended for the turning and manoeuvring of vehicles would be located to the immediate front of Plot 4. This is a property that would be provided with plentiful private parking opportunities such that there is no clear reason to consider that the shared turning area would potentially be utilised for parking. Furthermore, given the limited number of properties to be built on site, I am content that the living conditions of the future occupiers of Plot 4 would not be unacceptably affected by the manoeuvring of vehicles.

19. I am satisfied that the scale and form of the proposed dwellings would be suitably respectful of other properties in the area. Moreover, large two storey properties are not uncommon local to the site and a mix of architectural styles and external-facing building materials are in existence nearby. Furthermore, notwithstanding the spaciousness of the site currently and the intention to provide limited front garden space, I am unpersuaded that an unacceptably cramped or unduly high-density development is proposed in the context of the site's immediate and wider surroundings.

20. My attention has been drawn to past instances of construction/delivery vehicles driving over neighbouring land at the point of access to the site from Low Lane. The potential for future damage to be caused, including to underground service infrastructure, has been raised. Having inspected the access and considered its width and specification, I am content that it is realistically capable of accommodating construction traffic satisfactorily. Furthermore, in the event the appeal be successful, a Construction Management Plan to include, amongst other provisions, details of measures to mitigate any potential adverse effects of vehicle movements, could be appropriately secured via condition in the interests of highway safety and protecting the living conditions of neighbouring occupiers.

21. Concerns have been raised that the proposal would place additional stress upon local infrastructure, including doctors' surgeries. However, given the modest number of new dwellings being considered, any such effects would not be so significant to generate a requirement for mitigation by way of planning obligation.

22. The proposal accords with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conditions

23. The Council has suggested conditions that the appellants have had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments for consistency and clarity purposes.

24. A condition specifying the approved plans and documents is reasonable in the interests of certainty. Further in the interests of certainty and to safeguard neighbouring living conditions, a condition confirming a maximum 8.8m distance from the rear elevation of The Chestnuts to be extended beyond by Plot 1 is reasonable and necessary to impose. Moreover, whilst the difference between 8.8m and 9m has been compared to the thickness of a line on a plan, this is due to the 1:500 scale used on the submitted block plan. Given the sensitivities that apply in this particular area of the site, it is important that a precise distance is understood by all parties. I also note here that a distance of 8.8m is explicitly stated within the appellants' Statement of Case.

25. In the interests of protecting the character and appearance of the area, conditions are reasonable and necessary that secure a schedule of external facing materials and the implementation of a scheme of soft landscaping along with its future maintenance. The landscaping condition's imposition would also be in the interests of obtaining biodiversity net-gain. In the context of new habitat through planting being secured, and notwithstanding the relevant observations of an interested party, I do not consider clear justification exists for a condition specifically requiring swift nest bricks to be installed.

26. The Council has suggested that maintenance measures for the site's perimeter hedge be secured via condition. However, as this feature is long-established and does not prejudice the development proposal coming forward, I cannot find such maintenance measures reasonable and necessary to secure in the context of the planning permission being granted. I note here that there are set procedures to follow outside of the planning process should any neighbouring occupier wish to instigate a complaint due to alleged loss of light to their property by virtue of a high hedge.

27. Potential surface water runoff from the new driveway to be installed and/or from intended elevated build levels have been raised as concerns. However, to ensure that surface water runoff at the site is suitably managed and that flood risk is appropriately guarded against, it would be reasonable for planning conditions to be imposed that secure full compliance with a submitted Flood Risk Assessment and full details of the intended means of surface and foul water disposal. I note that, within the Flood Risk Assessment commitments are made to the utilisation of permeable block paving, gravel driveways, and soakaway crates.

28. In the interests of sustainability and the efficient use of resources, a condition to ensure the use of water efficiency measures and the subsequent written confirmation of installation of such is reasonable and necessary to impose. In the interests of protecting the general amenities of the area, full details of bin storage and collection arrangements are reasonable to require prior to the development's first occupation.

29. The Framework sets out that conditions to restrict national permitted development rights should not be used unless there is clear justification to do

so. In this case, I find that it is reasonable to withdraw a range of permitted development rights with respect to Plot 1, including with specific respect to house enlargements, roof additions and curtilage buildings. Indeed, the bulk and scale of Plot 1 is on the cusp of what can be considered acceptable in terms of its effect upon available outlook for occupiers of The Chestnuts. Moreover, when also noting the importance of retained privacy, it would be prudent for the acceptability of possible future householder development at Plot 1 to be rigorously assessed.

30. A request has been made for a condition to be imposed requiring no external lighting to be installed to specified elevations of, or within the external curtilage of, Plot 1. However, in an inherently residential area, noting the realistic low illuminance levels of any domestic lighting to be installed, I do not find such a restriction to be fair or reasonable. It should also be noted that there would exist alternative channels for any possible future light nuisance to be investigated outside of the planning process.

31. As finished ground floor levels are to be set at 3.5m AOD through the planning condition related to the Flood Risk Assessment, it is not necessary to impose a separate condition requiring full details of existing and proposed site/floor levels to be submitted. Indeed, a topographical survey has already been produced (as appended to the Flood Risk Assessment) and land level changes of modest extent are necessitated by the scheme.

Conclusion

32. For the above reasons, the appeal is allowed and planning permission is granted subject to conditions.

Andrew Smith

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

2) The development hereby permitted shall be implemented in full accordance with the following approved plans and documents: Site Location Plan (scale 1:1250); 001; 002; 003; 004; 005; Design and Access Statement, dated 12 October 2021; Flood Risk Assessment and appendices, dated 1 October 2021; Daylight, Sunlight and Overshadowing Study, dated 6 October 2021; Amenity Impact Assessment, dated 24 November 2021; Application form, dated 19 October 2021.

3) The dwelling on Plot 1, as depicted on approved plan Ref 001, shall extend no further than equivalent to 8.8m measured rearwards from the rear elevation of The Chestnuts.

4) The development hereby permitted shall be undertaken in full accordance with a Construction Management Plan and Method Statement to have first been submitted to and approved in writing by the Local Planning Authority, which shall include details of:

- The phasing of the development, to include access construction.
- Parking for site operatives and visitors.
- Measures to mitigate any potential adverse effects of vehicle movements and vehicle parking.
- Loading and unloading of plant and materials.
- The storage of plant and materials used in constructing the development.
- Wheel washing facilities.
- A strategy stating how surface water run off on and from the development will be managed during construction.
- Working hours.

5) The development hereby permitted shall be carried out in full accordance with the measures set out in the approved Flood Risk Assessment, dated 1 October 2021. In particular, the following measures shall be fully implemented before the development is first occupied:

- Finished ground floor levels shall be raised at 3.5m AOD (no lower or higher).
- Flood resilient construction shall be incorporated in the buildings to a height of 300mm above finished ground floor level.
- Future occupiers shall be provided with an emergency plan for safe evacuation depending on the prevailing conditions.
- Surface water run-off from the roofs of the dwellings and detached garage hereby permitted shall be discharged into soakaway crates. The infiltration system together with associated drainage shall be designed to BRE Digest 365 and meet the requirements of Part H of the Building Regulations.
- Permeable block paving and gravel driveways shall be utilised with a suitable base to allow the surface water to permeate into the ground.
- Services, where possible, shall be located above the 1% (1 in 100 year) plus climate change peak flood level.
- Flood warning and evacuation measures, to include safe routes for evacuation and flood warning registration, shall be put in place to ensure any potential flood events are communicated to occupiers at the earliest opportunity.

6) Prior to the commencement of development beyond oversite, full details of the proposed means of foul and surface water disposal to separate systems shall be submitted to and approved in writing by the Local Planning Authority and the details so approved shall be implemented in full prior to there being any flows into the receiving systems.

7) Prior to the commencement of development beyond oversite, a schedule of external-facing materials for the construction of buildings and paved areas hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in full accordance with the approved details.

8) Prior to the commencement of development beyond oversite, a scheme of soft landscaping for the site to complement the existing mature hedge to be retained (as depicted upon approved plan Ref 001) and to include the number, species, heights and positions of all trees to be planted together with details of post-planting maintenance shall be submitted to and approved in writing by the Local Planning Authority, and shall thereafter be implemented in its entirety during the first planting season following practical completion of the development. Any trees or other plants which within a period of five years from the completion of the development, die, are removed, uprooted, or become significantly damaged, diseased or deformed, shall be replaced during the next planting season with others of the same size, species and quality as approved.

9) Prior to the first occupation of the development, details of the means of storage and disposal/collection of refuse and recycling shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented prior to the first occupation of the development, and thereafter retained.

10) Prior the first occupation of the development, full details of intended boundary treatments, including a schedule of fencing levels, heights, and materials, shall be submitted to and approved in writing by the Local Planning Authority, and the details so approved shall be implemented in full prior to the first occupation of the development and retained thereafter.

11) The water consumption of each dwelling hereby permitted shall not exceed the requirement of 110 litres per person per day (as set out as the optional requirement in Part G of the Building Regulations 2010 and the South East Lincolnshire Local Plan 2019). Written confirmation that this water consumption requirement has been met shall be submitted to and approved in writing by the Local Planning Authority no later than five days after the completion of each individual dwelling.

12) The first floor en-suite window, the ground floor study window and the utility room door on the western elevation of the dwelling approved on Plot 1 shall be obscure-glazed and retained as such at all times. No part of any window on the western elevation of the dwelling approved on Plot 1 that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened.

13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out on Plot 1:

- The erection of house enlargements, including rear extensions and conservatories.
- The erection of roof additions, including dormer windows.
- The erection of freestanding curtilage buildings, including any raised platform/decking.
- The insertion of windows or doors on the western elevation (other than those expressly authorised by this permission).

----------END OF SCHEDULE----------