
Appeal Decision

Site visit made on 27 August 2015

by **M Seaton BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 September 2015

Appeal Ref: APP/W0734/W/15/3033360

Land adjacent Ford Close Riding Centre, Brass Castle Lane, Middlesbrough, TS8 9EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Mick Phipps (PH Land & Developments) against the decision of Middlesbrough Borough Council.
 - The application Ref M/OUT/0079/15/P, dated 20 January 2015, was refused by notice dated 13 April 2015.
 - The development proposed is an outline application for 5 no. detached dwellings with associated access.
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Decision

1. The appeal is allowed and outline planning permission is granted for 5 no. detached dwellings with associated access on Land adjacent to Ford Close Riding Centre, Brass Castle Lane, Middlesbrough, TS8 9EE in accordance with the terms of the application, Ref M/OUT/0079/15/P, dated 20 January 2015, subject to the conditions set out in the Annex.

Procedural Matters

2. The application has been submitted in outline with approval for access being sought at this point. All remaining matters (layout, appearance, landscaping and scale) are reserved for later approval. I have dealt with the appeal on this basis, treating the plans submitted in all respects save for the means of access as indicative of the type of development that could be carried out.

Background and Main Issue

3. The proposed development the subject of this appeal follows the refusal of an earlier application for 6no. dwellings, and the subsequent dismissal at appeal in 2014. The earlier scheme was ultimately rejected solely on the basis of the impact on highway safety as a result of the use of the northern of the two access points proposed to serve the development. On the basis of the submitted evidence, all other matters were considered to be undisputed '*common ground*' between the Council and the appellant.
4. The revised proposal the subject of this appeal seeks to address the earlier refused scheme, and proposes only a single access point towards the southern end of the appeal site. In refusing outline planning permission for the appeal scheme, the Council has highlighted concerns in respect of traffic generation from the proposed development, as well as the safety of the proposed single

access point. The Council has not raised any objections with regards the principle of development or any other technical non-highway matters. As a consequence, the main issue is the effect of the proposed development on the safety of users of the adjacent highway network.

Reasons

5. The appeal site is located to the south of Nunthorpe and occupies a parcel of land to the east of Brass Castle Lane and Middlesbrough Golf Club. Brass Castle Lane is an unclassified two-way road which links the A172 and B1365. The access to the development is proposed towards the southern end of the site on the outside of a bend in Brass Castle Lane, and would be positioned close to an existing vehicular access.
6. In framing its reason for refusal, the Council has raised concern regarding the levels of likely traffic generation from the proposed development of 5no. dwellings, and the consequent impact on the existing traffic capacity of Brass Castle Lane. In this respect, I note that the appellant has submitted a copy of the Access Statement dated July 2013 as prepared by Morgan Tucker, which was produced in support of the earlier application and appeal. This statement indicated that traffic flows on Brass Castle Lane were low, a conclusion which was accepted by the Inspector for the 2014 appeal. Furthermore, I note that on an average weekday the appeal scheme is highlighted as having the potential to generate 1 inbound and 3 outbound motorised vehicular movements during the morning peak hour, and 3 outbound and 2 inbound motorised vehicular movements during the evening peak hour.
7. The Council's statement indicates the concerns over highway safety have been derived from Members' in-depth local understanding of Brass Castle Lane, with a particular focus on the narrowness and winding nature of the lane coupled with its increasing use, particularly as a 'rat-run' during peak hours. However, whilst I would agree with the Council's assessment of the characteristics of the carriageway along the length of the lane, I did not observe these to have any significant adverse effect on the passage of traffic using the lane. Furthermore, whilst I have noted that the reported peak flows as surveyed by the Council in 2013 equated to approximately two vehicles per minute, I do not agree with the Council's contention that this amounts to a substantial traffic volume in the context of the lane or local highway network. I also do not consider that the additional motorised vehicular movements generated by the development would result in a severe residual impact, which is the required test for development as set out at paragraph 32 of the National Planning Policy Framework (the Framework). The Council has not produced any additional technical evidence to update the 2013 figures or refute the conclusions which were previously reached regarding flows along Brass Castle Lane.
8. The appellant has submitted a further Access Statement dated October 2014 which has been prepared by Travel Plan Services, which has sought to address the shortfalls of the Morgan Tucker Access Statement in respect of the provision of satisfactory visibility splays. On the basis of this submitted evidence and my own observations, I am satisfied that at the point of the proposed access it would be feasible to provide a cleared visibility splay of 2.4m x 59m within the extent of the highway, which would be in accordance with the required standard as set out in *Manual for Streets* and the *Design Manual for Road and Bridge Works (DMRB)*. In this respect, I do not accept the

Council's contention that there would be restricted vision at the point of the proposed access resulting in an adverse effect on highway safety.

9. In reaching my decision, I have been mindful of the lack of objection to the proposals from the highway authority, which in the absence of contrary technical evidence is a factor to which I have attached significant weight.
10. On the basis of the submitted evidence and my own observations at the site visit, I am satisfied that the proposed development would not generate unacceptable levels of traffic in the context of the local highway network, and that satisfactory access providing an appropriate level of visibility for highway users can be provided without harm to highway safety. The development would therefore accord with Policy DC1(d) of the Middlesbrough Core Strategy 2008, which seeks to ensure that proposals contribute towards the removal of barriers to access and movement. Furthermore, the proposals would accord with paragraph 32 of the Framework as the residual impacts of the development would not be severe.

Conditions

11. The Council has suggested a number of conditions which it considers would be appropriate were the appeal to be allowed. I have considered these in the light of paragraph 206 of the National Planning Policy Framework.
12. In the interest of proper planning, conditions relating to the identification of plans and submission and implementation of reserved matters would be necessary. Conditions relating to adherence to the submitted Flood Risk Assessment and provision of details of surface water drainage for the site would allow control over the environmental management of the site as well as maintaining highway safety, although I have amalgamated the proposed surface water drainage conditions into a single condition. The Council has also suggested a condition relating to the potential for land contamination as a means of assessing and mitigating any risk to the occupiers of the land and any future development. Conditions related to highway protection measures and the details of temporary parking during the construction period, as well as full details of the construction and materials to be used on the adopted highway, would be necessary in the interests of highway safety. In respect of the latter condition, I have added the missing implementation clause to reflect the need for completion of the approved works prior to first occupation of the dwellings hereby approved.
13. As a consequence of the above conditions, a separate condition proposed by the Council in respect of the approval of details related to siting, design, external appearance, land surface contours and landscaping, as well as details of the means of access hereby approved, would be unnecessary.

Conclusion

14. For the reasons given above and subject to the conditions listed, the appeal should be allowed.

M Seaton

INSPECTOR

Attached – Annex – Conditions

Annex

Conditions

- 1) Details of the layout, scale, appearance, and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Other than as required by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: HM Land Registry Site Plan, Drawing Number SK02 Rev. D – Proposed Site Plan dated 26.03.15.
- 5) A full and competent site investigation, including Risk Assessment, must be undertaken and submitted to the Local Planning Authority for approval. This must identify any contamination present and specify adequate remediation necessary. The Risk Assessment and Remediation Scheme must be approved, in writing, by the Local Planning Authority and thereafter implemented, prior to the development taking place. Validation of the remediated site shall be provided in the form of a detailed Completion Statement confirming that works set out and agreed were completed and that the site is suitable for its intended use.
- 6) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) dated July 2013, and the following mitigation measures detailed within the FRA:-
 - (i) Limiting the surface water runoff generated up to and including the 100 year critical storm (including climate change) so that it will not exceed the runoff from the undeveloped site and not increase the risk of flooding off site. Section 5.3 details the process by which this will be achieved.
 - (ii) The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.
- 7) A plan showing the location of temporary car parking to accommodate operatives and construction vehicles during the development of the site and measures to protect any existing footpaths and verges shall be submitted to and approved, in writing, by the Local Planning Authority and implemented upon commencement of construction and thereafter such parking is to be removed on completion of the works.
- 8) No development shall take place until a surface water drainage scheme for the site (including a plan showing measures to prevent surface water

flowing onto the highway), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved, in writing, by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including the 100 year critical storm will be exceeded by the run-off from the undeveloped site following the corresponding rainfall event. Surface water discharge from the development must be limited to greenfield runoff rate of 5 l/s. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

- 9) Before the construction of the proposed adopted highway commences, full details of the construction and materials to be used on the proposed adoptable highway, including finishes, levels, gully positions, layout and material build-ups, should be submitted to and approved, in writing, by the Local Planning Authority. The work shall be implemented in accordance with the approved details and completed prior to occupation of the first dwelling.



Appeal Decision

Site visit made on 10 August 2015

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 September 2015

Appeal Ref: APP/W0734/W/15/3032588

4 Evergreen Way, Marton in Cleveland, Middlesbrough, TS8 9ZD

- 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 Mr D Plummer against the decision of Middlesbrough Council.
 - The application Ref M/FP/1059/14/P, dated 10 October 2014, was refused by notice dated 13 April 2015.
 - The development proposed is a detached bungalow.
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Decision

1. The appeal is allowed and planning permission granted for a detached bungalow at 4 Evergreen Way, Marton in Cleveland, Middlesbrough, TS8 9ZD in accordance with the terms of the application, Ref M/FP/1059/14/P, dated 10 October 2014, subject to the conditions set out in the schedule to this decision.

Main Issues

2. The main issues are considered to be:
 - The effect of the proposal on the character and appearance of the area.
 - The living conditions of the occupiers of neighbouring properties, with particular regard to privacy and outlook.

Reasons

Character and Appearance

3. The appeal site is situated within a new housing development, some of which is still under construction. The development consists of 3, 4 and 5 bedroom homes and 2 bedroom bungalows. The site forms an irregular shaped parcel of rough land situated to the rear of 4 Evergreen Way and to the west of the detached garage serving that property. The land was originally intended as an electricity substation as part of the proposals for the housing development, however, the substation is no longer required and the land was incorporated into the curtilage of 4 Evergreen Way.
4. The site is not allocated for any purpose, however, the wider site has been established as residential use under a previous permission. The principle of residential development in this location is, therefore, acceptable. Paragraph 53 of the National Planning Policy Framework (the Framework) states that Local Planning Authorities should consider the case for setting out policies to resist

inappropriate development of residential gardens, for example where development would cause harm to the local area. However, the appeal site was not originally intended to be part of the curtilage of 4 Evergreen Way; it remains fenced off from the main garden and has not yet been laid out as a formal garden.

5. The Middlesbrough Urban Design Supplementary Planning Document (SPD) 2013 seeks to discourage left over space in residential developments which typically provide little benefit or relevance to the residential area. The test of relevance being on the positive contribution a space makes to the neighbourhood. The site is currently overgrown and untidy and 'leftover' from the original development and, therefore, has little benefit to the character of the area or to residents. The proposal would make good use of this leftover space.
6. The proposal would occupy approximately 26% of the overall plot size, a similar ratio to the bungalows which have planning approval on the wider development. I, therefore, consider this to be an acceptable ratio providing sufficient amenity space for future occupiers of the proposal and the occupiers of the host property. The scale of the proposed bungalow would not be excessive in its plot and it would not appear cramped.
7. I, therefore, consider that the proposal would not harm the character and appearance of the area and would, thereby, comply with: criterion b of Policy DC1 of the Middlesbrough Local Development Framework Local Development Framework (LDF) Core Strategy 2008 which seeks to ensure that the visual appearance and layout of the development and its relationship with the surrounding environment will be of a high quality; criterion c of Policy CS5 of the LDF which seeks to secure a high standard of design for all development; and paragraphs 4.3-4.5 of the SPD.

Living Conditions of the Occupiers of Neighbouring Properties

8. The plot of land is to the north of 38, 39 and 40 Shandon Park, to the east of Plots 5 and 6 of the Longridge Development (these houses are yet to be built) and to the south of and across the highway from 38 Evergreen Way. Vehicular access to the new bungalow would be from Evergreen Way.
9. In terms of the relationship with the properties to the rear, 38, 39 and 40 Shandon Park, I consider that the potential for overlooking and loss of privacy is minimised by the fact that the proposal is for a single storey dwelling with windows only at ground floor to the rear, in addition to the proposed 2 metre high fence. The height to the eaves of the property is approximately 2.5 metres at the rear. The total height of the roof would be approximately 4.5 metres in total. As the roof slopes away from the gardens of 38, 39 and 40 Shandon Park, the highest part of the roof would be set back from the boundary. Furthermore, taking into account the length of the gardens and the fact that the site is set lower than those properties, I consider that the proposal will not have a harmful effect on the living conditions of the occupiers of 38, 39 or 40 Shandon Park in terms of outlook.
10. Representations have been received from 38 Evergreen Way that the proposal would be too close to their property and directly overlook their main living room window. Whilst the property will not reflect the separation distances that are apparent on the rest of the development (approximately 17-25 metres), it

will nevertheless achieve the separation distances set out in the Council's adopted Urban Design SPD (14m). I, therefore, do not consider that it would have a harmful effect on the living conditions of the occupiers of no 38. They also consider that the dropped kerb would encourage pedestrians to cross the road at this point and walk directly towards their living room window. However, the installation of a dropped kerb would not in itself have an effect on privacy and in any event it is not possible to control where people decide to cross the road.

11. The developer of the estate has objected on the basis that the proposal would affect the living conditions of the occupiers of the plots which are yet to be constructed to the west. However, it is considered that the required separation distances would be achieved between the proposed bungalow and these plots (5 and 6). Furthermore, the proposed 2m high fence will help to protect the privacy of the occupiers of those plots. I am, therefore, satisfied that the proposal would not have a harmful effect on the living conditions of the occupiers of the future plots.
12. I, therefore, conclude that the proposal would not have a harmful effect on the living conditions of existing or future occupiers of the estate and the proposal thereby complies with criterion c of Policy DC1 of the LDF and the Urban Design SPD which seek to ensure that the effect of proposals on the amenities of occupiers of nearby properties will be minimal both during and after completion.

Other Matters

13. A representation was received relating to concerns regarding highway safety. However, the proposal provides sufficient off street parking and no objections have been raised by the highway engineers subject to the imposition of two conditions.
14. The occupier of 40 Shandon Park has raised concern regarding the proposed solar panels and the potential for them to reflect the sun's rays into bedroom windows. It must be noted that the installation of solar panels on domestic properties would generally be permitted development and as such it would be unreasonable to require their removal.

Conditions

15. I have had regard to the various planning conditions that have been suggested by the Council. For the avoidance of doubt and in the interests of proper planning it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans. I agree that a condition requiring samples of finishing materials to be submitted to and approved by the Local Planning Authority is necessary in order to ensure a satisfactory form of development. The Council has suggested a condition requiring a plan showing the location of temporary car parking to accommodate operatives and construction vehicles during the development together with measures to protect any existing footpaths and verges to be submitted and approved in writing by the Local Planning Authority. I agree that this is necessary in order to protect the living conditions of the occupiers of neighbouring properties during construction. A condition requiring a scheme for a Sustainable Drainage System is also necessary to ensure satisfactory and sustainable drainage of the site.

16. The Council have suggested that permitted development rights are revoked to ensure that the property is not extended. I agree that this is necessary in order to protect the amenity of the occupiers of neighbouring properties and the approach would be consistent with the bungalows which have been approved as part of the wider development which have also had their permitted development rights removed.

Conclusion

17. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Caroline Mulloy

INSPECTOR

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of his decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan dated 10/10/2014
 - Existing Ground Floor Plan, drawing number 1 of 3 dated 06/10/2014
 - Proposed (ground floor plan; roof plan; section of fence) drawing number 2E of 3, revision E dated 19/02/2015
 - Proposed (side elevations; front and rear elevations; ground floor plan; section). Drawing number 3E of 3 revision E 19/02/2015
 - Drawing number: SPA-Layout, Revision E dated 19/02/15
- 3) No development shall commence until details and samples of the materials to be used in the construction of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details/samples.
- 4) Before the construction of the dwelling house hereby permitted commences, a plan showing the location of temporary car parking to accommodate operatives and construction vehicles during the development of the site and measures to protect any existing footpaths and verges shall be submitted to and approved in writing by the Local Planning Authority and implemented upon commencement of construction and thereafter such parking is to be removed on completion of the works.
- 5) Before the construction of the development hereby approved commences, a scheme for a Sustainable Drainage System (SDS) which shall sustainably drain surface water, minimise pollution and manage the impact on water quality, shall be submitted to and approved in writing by the Local Planning Authority and thereafter fully implemented in line with the agreed programme of work. A scheme for the management and maintenance of the SDS shall be submitted to and approved by the Local Planning Authority and the system shall be managed and maintained thereafter in accordance with the scheme to the satisfaction of the Local Planning Authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the dwelling house hereby approved shall not be extended or materially altered in external appearance nor shall any ancillary buildings be erected within the curtilage of the dwelling house without planning permission being obtained from the Local Planning Authority.

