



Appeal Decision

Site visit made on 18 August 2020

by **Benjamin Clarke BA (Hons.) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: Thursday, 08 October 2020

Appeal Ref: APP/X1925/W/20/3251399

53-55 Benslow Rise, Hitchin SG4 9QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Christie and Mr L Molyneux against the decision of North Hertfordshire District Council.
 - The application Ref: 20/00293/S73, dated 6 February 2020, was refused by notice dated 24 March 2020.
 - The application sought planning permission for the erection of two four-bed detached dwellings, parking, amenity space and landscaping, with access from Benslow Rise. Part demolition and extensions to 53 Benslow Rise, with alterations to 55 Benslow Rise without complying with a condition attached to planning permission Ref: 19/00253/FP, dated 26 April 2019.
 - The condition in dispute is No. 2, which states that: the development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and plans listed above.
 - The reason given for the condition is: to ensure the development is carried out in accordance with details which form the basis of this grant of permission.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of two four-bed detached dwellings, parking, amenity space and landscaping, with access from Benslow Rise. Part demolition and extensions to 53 Benslow Rise, with alterations to 55 Benslow Rise at 53-55 Benslow Rise, Hitchin SG4 9QY in accordance with the application Ref: 20/00293/S73 dated 6 February 2020, without compliance with condition number 2 previously imposed on planning permission Ref: 19/00253/FP dated 26 April 2019, but subject to the attached schedule of conditions.

Procedural Matter

2. It has been confirmed that following the initial granting of planning permission, the Council has approved an application for a non-material amendment. This means that the extant planning permission has been amended. I have therefore proceeded on this basis.

Background and Main Issues

3. Planning permission was previously granted for the erection of two dwellings to the rear of 53 and 55 Benslow Rise, including some alterations to the existing dwellings. This condition was subject to a condition that specified the list of

approved plans. Subsequently, an application was submitted to the Council to amend these plans. It is the refusal of this application that is the subject of this appeal. In consequence, from the evidence before me, the main issues are:

- the effect of the development, with the proposed amendments, on the character and appearance of the surrounding area; and
- the effect of the development, with the proposed amendments, upon the living conditions of neighbouring properties, with reference to outlook.

Reasons

Character and appearance

4. The appeal site consists of two detached bungalows, which both feature large rear gardens. The levels of the gardens vary slightly. The surrounding area contains several dwellings that are constructed to different designs and proportions. The surrounding area features a mixture of buildings, including dwellings arranged in a linear form and some backland properties, including a nursing home.
5. The proposed dwellings would be located to the rear of the existing dwellings and larger than those originally approved, therefore elements of the dwellings would be visible from Benslow Rise. However, they would not be prominent in views from this street owing to most of their form being largely screened by the existing buildings. The presence of the appeal scheme would be further softened by the new landscaping.
6. The proposed dwellings would include projecting front gables. There are examples of similar front projecting gables within Benslow Rise and some of the surrounding streets. In addition, many of the nearby dwellings are constructed to different and contrasting designs, including some backland dwellings and other buildings, such as a care home. Therefore, the prevailing character can be defined as featuring architectural variety and the proposed development would not appear out of place in this context.
7. Elements of the proposed dwellings would be visible from the street, but these would be viewed against a backdrop of varied building uses and designs. These include some dwellings and a nursing home that are sited within back land locations. Accordingly, the sight of two additional dwellings behind the existing bungalows would not be particularly unusual.
8. A condition not in dispute is that the dwellings should be constructed with materials approved by the Council. This provides a mechanism that would ensure that the proposed dwellings would be constructed from a palette of materials that are compatible with the surrounding area and would further reduce the effects of the development upon the character and appearance of the surrounding area.
9. I therefore conclude that the development, with the amendments proposed, would not have an adverse effect on the character and appearance of the area. The development therefore conforms with Policy 57 of the North Hertfordshire District Local Plan (1996) (the Local Plan), which seeks to ensure that new developments are visually acceptable and relate to the physical shape of the site and existing features. As such, it is not necessary or reasonable to retain Condition 2 as originally imposed.

Living conditions

10. The immediately adjoining dwellings are constructed to different designs and located broadly in line with the existing bungalows. A backland dwelling adjoins the site on one side.
11. The proposed dwellings would be of a larger scale than those previously approved. However, they would be located on land that would be lower than the adjoining site levels. The use of a front gable design would also reduce the bulk of the proposed dwellings, as the roof slope would be less apparent from dwellings in Benslow Rise. As such, their general massing would not be harmfully apparent from neighbouring properties.
12. The set back of the proposed dwellings from the rear elevations of the properties in Benslow Rise would be sufficient to prevent the development from having a significant overbearing or enclosing effect on the occupants of these properties when looking out of their rear windows. The proposed dwellings would be visible from the rear gardens of the neighbouring properties in Benslow Rise but such views would be made at an oblique angle. This would reduce the visual presence of the proposed development and also prevents it from being overbearing when viewed from nearby gardens.
13. In addition, the proposed development would have a lower eaves height and a shallower roof slope than the originally approved scheme. In consequence, the scheme before me would not have any greater effects on the levels of outlook of the occupiers of other properties in Benslow Rise than the previously permitted development.
14. The neighbouring back land dwelling features some windows on the side elevation facing the appeal site. However, the level of outlook that these windows experience is limited owing to the boundary treatment that has been installed at the appeal site. The evidence before me indicates that these boundary treatments would be retained post development. In addition, the precise siting of the proposed dwellings would be consistent with those that had previously been granted permission.
15. In consequence, there would not be a notable change in the level of outlook that the occupiers of the existing back land development would experience post construction of the proposed dwellings. In result, the proposed amendment would not result in significant harm to the living conditions of the occupiers of this neighbouring property
16. The revised scheme would result in an increase in the number of windows within the front elevation when compared to the previously permitted development. However, the additional windows facing the rear elevations and gardens of neighbouring properties in Benslow Rise would not be overly large and views from the proposed dwellings would be diffused by the proposed new landscaping, which can be secured via a condition. Accordingly, the proposed development would not result in an adverse effect upon the levels of privacy experienced by existing residents.
17. I therefore conclude that the proposed development, with the amendments proposed, would not have an adverse effect on the living conditions of the occupiers of neighbouring properties. The development would therefore comply with Policy 57 of the Local Plan, which seeks to ensure new developments

function adequately. As such, it is not necessary or reasonable to retain Condition 2 as originally imposed.

Other Matters

18. I have noted references to an emerging local plan. However, the amount of weight that I can attribute to this document is limited on account of the findings of the examination in public being awaited.
19. Concerns have been raised regarding the effect of the development upon the highway system. However, this appeal relates to amendments to a previous permitted scheme. I have no reason to believe that these amendments would result in a greater effect on the highway system.
20. Representations received have also referred to potential restrictive covenants that may affect the appeal site. However, such covenants are civil matters and therefore outside of the scope of this appeal.

Conditions

21. As this appeal relates to revisions to the wording of a condition; the implementation condition also needs to be amended in order not to increase the timeframe for implementation of the planning permission. Due to the outcome of this appeal, I have amended the wording of Condition 2 in order to reflect the new approved plans and those included within the previously approved Non-Material amendment.
22. The original planning permission included conditions relating to building materials; landscaping; a Construction Management Plan; access; and the installation of gates. As these conditions are not disputed by any party and appear necessary in order to ensure that the development would harmonise with its surroundings; would not affect the living conditions of the occupiers of neighbouring properties; would result in the provision of appropriate landscaping; and would not affect highway safety, I have reinstated them apart from Condition 6, which I have amended to include the new proposed site plan.

Conclusion

23. For the preceding reasons, I conclude that the appeal should be allowed, and planning permission granted.

Benjamin Clarke

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the 26 April 2022.
2. The development hereby permitted shall be carried out wholly in accordance with the details specified in the application and supporting approved documents and the following list of plans: 108_81_Location; 107_45A_01; 107_45A_02; 107_45A_10; 107_45_11; 107_45A_30; 107_45A_31; 107_46A_10; 107_46A_11; 107_47A_10; 107_47A_11; 107_47A_12; 107_47A_20; 107_47A_30; 107_47A_30-1; 107_47A_31; 107_48A_10; 107_48A_11; 107_48A_12; and 107_48A_30.
3. Details and/or samples of materials to be used on all external elevations and the roof of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced and the approved details shall be implemented on site.
4. Prior to the commencement of the development hereby permitted full details of all hard and soft landscaping including all boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
5. No development shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. Details submitted in respect of the CMP, incorporated on a plan, shall provide for wheel cleaning facilities during the demolition, excavation, site preparation and construction stages of the development. The CMP shall also include details of the means of recycling materials, the provision of parking facilities for contractors during all stages of the development (excavation, site preparation and construction) and the provision of a means of storage and/or delivery for all plant, site huts, site facilities and materials.
6. Prior to the first occupation of the development hereby permitted the vehicular accesses (as shown on drawing number 107_45A_01) and any other necessary highway works shall be completed in accordance with the Hertfordshire County Council residential access construction specification. Prior to use arrangements shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.
7. The approved details of landscaping shall be carried out before the end of the first planting season following either the first occupation of any of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced during the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to vary or dispense with this requirement.
8. No gates shall be provided across the access to the site.