



Appeal Decision

Site visit made on 29 May 2015

by M Seaton BSc (Hons) DipTP MRTPI

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

Decision date: 21 July 2015

Appeal Ref: APP/N1350/W/15/3004028 Land at Rear of 3-4 Hill Garth, Darlington

- 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 Varn Atkins against the decision of Darlington Borough Council.
 - The application Ref 14/01113/FUL, dated 4 November 2014, was refused by notice dated 15 January 2015.
 - The development proposed is the erection of a residential development of 4 units.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a residential development of 4 units at Land at Rear of 3-4 Hill Garth, Darlington, in accordance with the terms of the application Ref. 14/01113/FUL dated 4 November 2014, subject to the conditions set out in the Annex.

Application for costs

2. An application for costs was made by Mr Varn Atkins against Darlington Borough Council. This application will be the subject of a separate Decision.

Procedural Matter

3. There is some variation between the address of the appeal site as identified on the planning application forms, and the Council's Decision Notice. Whilst, I am satisfied that both main parties are referring to the same site, I have adopted that the Council's description of the site as providing a more accurate indication of its location, which I note has also subsequently been adopted by the appellant in the Grounds of Appeal.

Main Issue

4. The main issue is whether the proposed development would safeguard the living conditions of the neighbouring occupiers of dwellings on Hill Garth, having regard to outlook.

Reasons

5. The appeal site comprises a generally vacant and severely overgrown plot upon which a single-storey nissen building remains. The appeal site is positioned on land broadly to the west of the rear gardens of existing dwellings on Hill Garth,

with access to the site provided via an existing footpath and pavement on Prior Street. An existing watercourse is located beyond the footpath, which runs parallel to the footpath and Prior Street itself.

6. I have been mindful of a recent dismissed appeal decision on the site from October 2014 relating to an earlier scheme, the details of which have been submitted with the evidence of the main parties. The appellant has indicated that the proposed scheme has sought to address the concerns of the previous Inspector, and as a consequence has resulted in the removal of a 1.5 storey building to form the current proposals. I have carefully considered the implications of this appeal in addition to considering the planning merits of this case.
7. In assessing the relationship with the rear of the properties on Hill Garth, I have had regard to the current difference in height between the appeal site and adjoining gardens, although I am mindful that the ground level of the proposed development would be raised by 1 metre in order to address matters related to flood risk. As a result of my observations at the site visit, I accept that the existing rear gardens of the dwellings on Hill Garth are relatively limited in their depth, and possess varying levels of boundary treatment and planting, which would in places provide only a limited means of screening of the development as proposed.
8. The omission of the 1.5 storey building which had been previously included as part of the dismissed appeal scheme, would undoubtedly lessen the overall impact of the proposed development on outlook from the rear of properties on Hill Garth. Despite this, I am also of no doubt that the introduction of the building as proposed incorporating a two-storey gable end, would still substantially alter the existing outlook from the rear of the dwellings in Hill Garth and their gardens, which are dominated at the current time by the mature trees and overgrown planting present on the appeal site. However, I also accept that the appeal site constitutes sustainably located previously developed land, and that it would not be an unreasonable expectation that the site be the subject of some form of redevelopment in the future.
9. In reaching my conclusions, I have been mindful of the Council's indication that the proposed development, which has been highlighted as being separated by at least 13 metres from windows in the main rear elevation at its closest point, would accord with the minimum distances between existing and proposed windows as set out in Supplementary Planning Document – Design for New Development 2011 (the SPD). Whilst I would agree with the Council's contention that this does not prevent Members from independently assessing the impact of the proposals, particularly in respect of outlook, I have not been provided with any compelling reasons why the guidance in the SPD should be set aside in this specific instance, whether in respect of the impact on privacy or outlook.
10. Turning to the specific dwellings, I noted on site that the principal orientation of the rear of the dwelling at No. 2 Hill Garth would be across the front of the proposed building and appeal site. As a consequence, I am satisfied that any impact on outlook would be more limited in this instance than would be experienced by Nos. 3 & 4 Hill Garth, and it is the latter properties upon which I have concentrated the majority of my assessment.

11. I have carefully considered the impact of the proposed development on the outlook from the rear gardens, and the existing rear conservatory on No.3 Hill Garth in particular, which would appear to be used as a main habitable room. Nevertheless, given the predominantly glazed nature of this structure, I am satisfied that the outlook for occupiers would not be restricted solely towards the direction of the proposed development. Furthermore, the same situation would be the case for users of the rear gardens. In respect of main habitable room windows in the rear elevations of the dwellings, I have taken into account the detailed design, scale, position and orientation of the proposed building including its separation from the properties on Hill Garth, the relative ground levels of the existing and proposed development, and the availability of existing screening and retention of trees. Considering these factors cumulatively, I am satisfied that the dwellings at Nos. 3 & 4 Hill Garth would maintain a level of outlook which, whilst worsened, would not result in an unacceptable standard of amenity for occupiers.
12. I have noted the concerns that have been raised by the interested parties in respect of the potential for the loss of privacy. Whilst I acknowledge that the existing orientation of the rear of the existing dwellings at Hill Garth has benefitted from the absence of development on the appeal site, I share the Council's view that the positioning of the windows on the proposed building, and their orientation in respect of the neighbouring properties of Hill Garth, would not result in an unacceptable privacy relationship.
13. Whilst I accept that the proposed residential development would result in a worsening of the outlook available from the rear of properties on Hill Garth, I am satisfied that the effect on living conditions would be acceptable. The Council has not referred to any Development Plan policies in respect of living conditions in its reason for refusal, and I have therefore assessed the appeal against the Framework. The development would not conflict with paragraph 17 of the Framework, which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

14. Interested parties have raised a number of other concerns with regards to the impact of the proposed development. These include the overdevelopment of the site, that the development would not preserve or enhance the character or appearance of the conservation area, and issues related to parking, flood risk and safety and security.
15. In respect of the contention that the proposal amounts to an over development of the site, I note that the proposed site plan shows that the development would incorporate reasonably sized areas of both private and communal amenity space, as well as adequate bin and cycle storage. The residential units would also be of a satisfactory size and layout within a traditionally detailed two-storey building, which would not be uncharacteristic of the design, scale and appearance of existing development in the vicinity and within the Cockerton Green Conservation Area. In this latter respect, I have also had regard to the absence of any objection on heritage grounds by the Council's Conservation Officer. On this basis, I am satisfied that the proposals would not amount to an over development of the site and would preserve the character and appearance of the conservation area.

16. Whilst I have had regard to the absence of off-street parking from the proposals, as well as the inability to directly access the properties by car, on the basis of the evidence before me and my own observations on the site, I would agree with the conclusions of the Council's highway officer that the proposals would not have an adverse impact on highway safety, or that given the character of the area that off-street parking should be integral to the scheme. In this respect, I have taken into account the references to the guidance within Manual for Streets, and also the availability of parking on-street within the wider area. I am therefore satisfied that subject to the suggested condition related to the protection of the existing footpath from car use, that the development would be acceptable in highway terms.
17. In respect of flood risk and safety and security, I have noted the responses from the Environment Agency and Durham Constabulary which indicate there to be no objections to the proposals on the respective grounds, and in the absence of any detailed evidence to the contrary, there would be no reason to refuse permission for the development on these grounds. I have also noted concern over the impact on the condition and continued maintenance of the wall on the boundary with neighbouring properties on Hill Garth. However, I am satisfied that this would be a matter capable of being addressed satisfactorily by condition.

Conditions

18. 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.
19. In the interest of proper planning, conditions relating to timeliness and the identification of plans would be necessary. A condition relating to the submission of full details of the materials of external surfaces of the development would be necessary to preserve the character and appearance of the conservation area. Conditions regarding a scheme of foul and surface water drainage, and the submission of a flood risk assessment, would be required in the interest of preventing flooding. The submission of details of a flood evacuation plan would be in the interests of the safety of future occupants.
20. Conditions addressing the potential for the contamination of controlled waters, as well as the potential for ground contamination as a result of the previous use of the site, would be necessary to provide adequate environmental and public protection.
21. Conditions requiring the submission of a construction management plan and details of bollards to the pavement in front of the appeal site would be necessary in the interests of both highway safety and residential amenity. In respect of the latter, a condition securing the provision of obscurely glazed windows on the south-west elevation would also be necessary. A condition preventing vegetation removal between September and February would be in the interests of the ecology of the site, whilst a condition related to a structural report regarding the retaining wall to Hill Garth would be necessary to prevent the occurrence of subsidence.

Conclusion

22. For the reasons given above, and having regard to all other matters raised, the appeal should be allowed subject to the conditions listed.

M Seaton

INSPECTOR

Attached – Annex – Conditions

Annex

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Other than as required by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos. 777-LP, 777-02 Rev. D, 777-03 Rev. D, 777-05 Rev. C and 777-06 Rev. C.
- 3) Notwithstanding any description of the external materials in the submitted application, details of the external materials to be used in the carrying out of this permission (including samples) shall be submitted to, and approved by, the Local Planning Authority in writing prior to the commencement of the development and the development shall not be carried out otherwise than in accordance with any such approved details.
- 4) Prior to the commencement of the development a detailed scheme for the disposal of foul and surface water from the development shall be submitted to and agreed in writing by the Local Planning Authority in consultation with Northumbrian Water. The development shall not be carried out otherwise than in complete accordance with the approved details.
- 5) Prior to the commencement of the development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall include details of;
 - i) hours of construction,
 - ii) a dust action plan,
 - iii) details for wheel washing,
 - iv) construction traffic routes,
 - v) road maintenance and signage,
 - vi) access and storage details for materials,
 - vii) site cabins.

The development shall not be carried out otherwise than in complete accordance with the approved plan.

- 6) If during development, contamination of controlled waters not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out until the developer has submitted a remediation strategy to the Local Planning Authority detailing how the unsuspected contamination shall be dealt with, and the written approval of the Local Planning Authority has been obtained.
- 7) The development hereby approved shall only be carried out in accordance with the approved Flood Risk Assessment by RAB Consultants (RAB: 665 NNE version 1) submitted with this application and the following mitigation measures detailed within the Assessment

- a) Limiting the surface water run-off generated by the impermeable area of the site to the existing run off rates so that it will not exceed the run off from the undeveloped site and not increase the risk of flooding off site;
 - b) The identification and provision of safe route(s) into and out of the site to an appropriate safe haven; and,
 - c) Finished floor levels are to be set no lower than 49.49m above Ordnance Datum (AOD). The mitigation measures shall be fully implemented prior to the occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme.
- 8) The ground and first floor windows in the south west facing gable end shall be obscured and shall not be fitted or repaired with anything other than obscure glazing. The level of obscurity shall be agreed in writing by the Local Planning Authority prior to the occupation of the development, and the development implemented in accordance with the agreed details.
 - 9) Prior to the commencement of any preparatory works associated with the development hereby approved, a certificate completed by an appropriately qualified structural engineer confirming that the construction will not have any adverse effect on the stability of the retaining boundary wall with Hill Garth, shall be submitted to and approved in writing by the Local Planning Authority.
 - 10) Vegetation removal shall be carried out between September and February only.
 - 11) The development hereby permitted shall not commence until a scheme to deal with contamination of land and/or groundwater, including soil contamination, ground/surface water contamination, landfill gas, leachates and stability as appropriate, has been submitted to and agreed in writing with the Local Planning Authority. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement specifically and in writing:-
 - (a) A Phase 1 Preliminary Risk Assessment, carried out by competent person(s), to identify and evaluate all potential sources and impacts on land and/or groundwater contamination relevant to the site shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of the development.
 - (b) A Phase 2 Site Investigation and Risk Assessment shall be carried out by competent person(s) to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until: A Phase 1 Preliminary Risk Assessment and has been completed and agreed in writing with the Local Planning Authority. a. The requirements of the Local Planning Authority for site investigations have been fully established; and b. The extent and methodology of the site investigation and risk assessment have been agreed in writing with the Local Planning Authority. c. The Phase 2 Site Investigation and Risk Assessment Report shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of the development.

- (c) A Phase 3 Remediation Statement for the remediation of land and/or groundwater contamination affecting the site determined through risk assessment shall be submitted to and agreed in writing with the Local Planning Authority prior to the commencement of the development. The works specified in the Phase 3 Remediation Statement shall be implemented and completed in accordance with the agreed Remediation Statement by competent person(s), no alterations to the Remediation Statement or associated remediation works shall be carried out without the prior written agreement of the Local Planning Authority.
 - (d) A completion report (Phase 4 Validation Report) confirming the objectives, methods, results and effectiveness of all remediation works shall be submitted to and agreed in writing with the Local Planning Authority within 2 months of completion of the development.
 - (e) Any contamination not considered in the Phase 3 Remediation Statement but identified during the construction/remediation works shall be subject to further risk assessment and remediation proposals agreed in writing with the Local Planning Authority and the development completed in accordance with any further agreed amended specification of works.
- 12) Prior to the occupation of the development, details of a scheme for the insertion of removable/sacrificial bollards on the footpath on Prior Street to the front of the appeal site, shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details.
- 13) Prior to the occupation of the development, a Flood Evacuation Plan shall be submitted to and approved in writing by the Local Planning Authority and the plan shall be put in place in perpetuity.