The Planning Inspectorate

Appeal Decision

Site visit made on 9 August 2011

by A J Davison BA(Hons) LLB(Hons) MSc MBA Dip LD RIBA FRTPI

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

Decision date: 16 August 2011

Appeal Reference: APP/H1033/A/11/2151618/NWF
21 Cotton Close, Whaley Bridge SK23 7GG

- 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 David Dean against the decision of High Peak Borough Council.
- The application Reference HPK/2010/0613, dated 23 November 2010, was refused by notice dated 21 February 2011.
- The development proposed is a new two-storey four bed detached property with attached garage on vacant plot adjacent to existing house (Plot 21).

Decision

1. The appeal is allowed and planning permission is granted for a new two-storey four bed detached property with attached garage on vacant plot adjacent to existing house at 21 Cotton Close, Whaley Bridge SK23 7GG in accordance with the terms of the application, Reference HPK/2010/0613, dated 23 November 2010, subject to the following conditions:

    1) The development hereby permitted shall begin not later than three years from the date of this decision.

    2) The development shall be carried out in accordance with the following approved plans: RBD01/001B (Proposed Plans and Elevations including Street Scene, Location and Proposed Site Layout) and RBD01/002 (Existing and Proposed Drainage Layout).

    3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building 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.

    4) No development shall take place until details of the vehicular access and parking spaces have been submitted to and approved in writing by the local planning authority. The access and parking spaces shall be provided, in accordance with the approved details, prior to the first occupation of the dwelling and thereafter retained for that purpose.

    5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with the approved details and to a timetable agreed in writing with the local planning authority.

6) No development shall take place until a drawing showing details of the existing and intended final ground levels of the rear garden has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Main Issues

2. The main issues in the appeal are, firstly, the impact of the proposed development on living conditions in 21 and 22 Cotton Close in terms of light and outlook and, secondly, its impact on the character and appearance of the area.

Reasons

Living Conditions in 21and 22 Cotton Close

3. The new house would lie to the north west of the adjoining house, number 21, which has six windows facing the site. All of these light habitable rooms. The gable of the 5.45m long attached garage of the new house would be about 2m from the side of number 21 and the 9.85m deep main side wall of the house would be a further 3.04m away. The new house would be set back slightly from the front of number 21 and, because Cotton Close slopes from east to west, it would be 1m lower.

4. Because of the orientation of the properties, the distance involved and the difference in level, the new house would have a negligible impact on the amount of light reaching the upper floor windows of number 21. The impact on the ground floor windows would be more marked but all the windows concerned are relatively small and are secondary sources of light. In each of the affected rooms the main windows are those in either the front or rear elevations, which would be unaffected by the appeal proposal.

5. For the same reasons, the proposed house would not have an unacceptable impact on the outlook from number 21. It would obstruct long distance views from the side windows but the Appellant can not reasonably be expected to maintain private views for others across his land. The Whaley Bridge Town Council has suggested that the house would overlook the side windows of number 21 but that can not be true as it would have no windows facing in that direction.

6. The proposed house would have six windows in its north west elevation, corresponding to those in number 21 and the Council has suggested that these should be obscure glazed so as to prevent any overlooking of number 22. The front of number 22 would face the side of the house at a distance of some 28m. It would also be positioned beyond the turning head and its own detached garage. There would, therefore, be no material impact on living conditions within number 22. It would be possible to obtain a view of the garden of number 22 but absolute privacy in gardens can not be expected in urban situations. Moreover, the garden of 22 is already overlooked by the side windows of number 21, albeit at a greater distance. The development would not, therefore, unduly affect privacy of occupants of number 22.

7. My conclusion on this issue is that the development would not unduly affect living conditions in 21 and 22 Cotton Close and that it would comply with saved Policies GD5, H11 and Appendix 2 of the 2005 High Peak Local Plan.

The Character and Appearance of the Area

8. The appeal site comprises a patch of grass between number 21 and the turning head at the end of the cul-de-sac. Although local residents refer to it as green open space and say they were told it could not be built on, there is nothing to indicate that it has any formal status as amenity land or public open space.

9. In terms of its size, scale and design the proposed house would be virtually identical to the others on the south side of Cotton Close. Although the Council suggests that it would have a cramped appearance it would have more space around it than do those other houses. It would, therefore, be in keeping with the rest of the development.

10. My conclusion on this issue is that it would not harm the character or appearance of the area and would comply with saved Local Plan Policies GD4 and H11.

Other Matters

11. The exact position of the boundary between the appeal site and 21 Cotton Close appears to be in dispute but that is a legal matter to be resolved by the parties concerned.

12. I have taken account of the concern expressed by local residents with regard to the highway implications of the development. The fact that the road has yet to be adopted by the Highway Authority does not have a bearing on the appeal. The addition of a single house is unlikely to have a material impact either on the free flow of traffic on the road or on highway safety. In view of the position of the house there is no reason to suppose that it would create a traffic hazard by obstructing the view of drivers using the turning head.

Conclusions

13. For the reasons given above and having regard to all other matters raised by local residents I conclude that the appeal should be allowed.

Conditions

14. The Council has suggested that, apart from the standard conditions identifying the approved plans and regarding the time limit for starting development, 15 others should be imposed if the appeal is allowed.

15. Three of these conditions relate to measures for dealing with soil contamination but the Council has given no explanation as to why they might be needed. There is nothing in the appeal documents to suggest that the site, which forms part of a recent housing development, might be contaminated. Without such evidence the imposition of these conditions can not be justified.

16. Two of the proposed conditions seek to control matters such as hours of working, the acoustic sealing of plant and the way in which plant and materials are stored on site during construction. These are all matters more appropriately controlled under other legislation.

17. The intended finished floor level of the house is shown on the plans but the proposed condition requiring information about levels in the garden is needed so as to protect the privacy of occupants of basement rooms in the adjoining house.

18. As the development is for a single dwelling the landscaping of the site is a matter that can safely be left to its occupants and does not need to be made the subject of conditions. A condition is, however, needed in order to protect the trees along the western boundary of the site. They would be relatively inaccessible at the foot of a steep slope beyond the boundary fence that the Appellant is proposing to erect so there is no need for elaborate precautions. A condition requiring the submission of details of the fence and other boundary treatment is required to ensure the satisfactory appearance of the development. It would provide adequate protection for the trees if it were to be erected prior to the start of construction rather than prior to occupation of the house as the Council suggests.

19. There is a need for the provision of the vehicular access, visibility splays and parking spaces to be made the subject of a condition in the interests of highway safety. The application plan shows an undifferentiated area of hard paving occupying much of the road frontage but does not define the access or the parking layout. I have, therefore, substituted a condition requiring the submission of these details for approval, in place of those suggested by the Council. It would be unreasonable, given the scale of the development, to require the access to be provided in advance of any other works as suggested by the Council rather than prior to occupation.

20. I have not imposed the suggested condition restricting permitted development rights in respect of the garage. Paragraph 87 of Circular 11/95, The Use of Conditions in Planning Permissions, says that such conditions should not be imposed save in exceptional circumstances, which do not exist in this instance.

Anthony J Davison

Inspector