The Planning Inspectorate

Appeal Decision

Site visit made on 18 June 2013

by Beverley Doward BSc BTP MRTPI

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

Decision date: 7 August 2013

Appeal Ref: APP/H1033/A/13/2193862
Land adjacent to 9 and 11 Marsh Lane, New Mills, Derbyshire, SK22 4PN

- 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 and Mrs JA & HC Swindells against the decision of High Peak Borough Council.
- The application Ref HPK/2012/0363, dated 22 June 2012, was refused by notice dated 3 September 2012.
- The development proposed is described as "full planning application for a single new dwelling (Use Class C3) on land adjacent to 11 Marsh Lane and the subdivision of No. 11 Marsh Lane into two dwellings (Use Class C3)".

Decision

1. The appeal is allowed and planning permission is granted for a single new dwelling (Use Class C3) and the subdivision of No. 11 Marsh Lane into two dwellings (Use Class C3) at land adjacent to 9 and 11 Marsh Lane, New Mills, Derbyshire, SK22 4PH in accordance with the terms of the application, Ref HPK/2012/0363, dated 22 June 2012, subject to the conditions set out at the end of this decision.

Procedural Matters

2. The postcode stated on the application form is incorrect. I have used the correct postcode in the heading above and in my formal decision.

3. The description given in the heading includes aspects that are not descriptions of the development. I have therefore removed them from my formal decision.

4. The appellant has suggested some amendments to the layout of the proposed garden areas and the access arrangement from the rear of No.11. However, these have not been considered by the Council and, as they have not been consulted upon, interested parties will not have had the chance to comment upon them. Accordingly, I have determined the appeal on the basis of the scheme which was before the Council.

Main Issue

5. The main issues in this appeal are whether the proposal would provide satisfactory living conditions for future occupants of the proposed new build dwelling with regard to privacy and the effect of the proposal on the living conditions of the occupants of No's 11 and 13, with regard to privacy and amenity space.

Reasons

6. The appeal site comprises a pair of stone built semi detached dwellings and their garden areas along with a parcel of land to the north where a large two storey stone workshop building with a single storey side extension is situated.

New dwelling

7. The proposed new dwelling would be constructed on the site of the workshop. It would be sited almost up to the rear boundary of the houses on Low Leighton Road and would therefore replicate the form and mass of the existing building on the site. The windows to the proposed dwelling would be on the front and side elevations. The dwelling would front onto the proposed new access road which would serve the appeal proposal and would provide access to an area of land to the east which is allocated for residential development. Consequently, the ground floor windows to the main habitable rooms on the front elevation would look out onto the proposed access road and its footway.

8. It is not an uncommon feature in residential properties within this locality for a living room at the front to look directly onto the street and in any case, the living room window to the proposed dwelling would be separated from the footway by a narrow strip of land. Therefore, space would be available to allow some form of enclosure and landscaping to be provided as well as offering a sense of protection from the proximity of pedestrians on the footway. Furthermore, the living room would have the benefit of a second window looking out onto the side garden which would provide an alternative source of light, were the principal window to be protected by curtains or blinds to safeguard privacy. Therefore, I consider that this arrangement would not be detrimental to the privacy enjoyed by the future occupants of the proposed dwelling. Although the window to the front elevation of the family room would look towards the proposed access road it would be far enough away from it to allow it to be fully screened from the view of pedestrians using the footway. Therefore, I conclude that the proposed new dwelling would provide acceptable living conditions for future occupiers with regard to privacy.

No's 11 and 13

9. The proposed new access road into the site would reduce the size of the existing front garden to No. 11. However, this would be more than compensated for by the proposed additional garden area to the side of the dwelling. Furthermore, the existing garden area to the rear of No. 13 would be subdivided to provide separate rear garden areas for No's 11 and 13. There is no indication that the Council has specific standards for the amount of garden space to be provided for dwellings. Furthermore, I consider that the proposal would provide sufficient outdoor amenity space to No's. 11 and 13 which would be workable and would be commensurate with that found elsewhere in the area.

10. The sub division of No.11 would result in 2 of the existing first floor windows, which look out onto the rear garden area, forming part of the proposed additional dwelling. However, there would be no material increase in the extent of overlooking of the rear garden area from that which currently exists. Moreover, given that both windows would be to a bathroom, which would be likely to be obscured, there could well be a reduction in any overlooking.

11. Any overlooking of the garden area from the ground floor of this elevation would be limited by it being at a lower level than the garden area and in any case it could be screened from view by landscaping. Therefore, I consider that the layout of the appeal proposal would not cause material harm to the living conditions enjoyed by the occupants of No's. 11 and 13, with regard to privacy and private outdoor amenity space.

12. Accordingly, the proposed development would comply with policy GD5 of the High Peak Local Plan 2005 which seeks to ensure that development proposals do not create an unacceptable loss of, or suffer from unacceptable levels of privacy, or general amenity. It would also accord with policy H11, and with the advice in the National Planning Policy Framework that planning should always seek to secure a good standard of amenity for occupants of buildings (paragraph 17).

Other matters

13. A bat and barn owl survey of the workshop was submitted with the planning application. Although this was undertaken early in the season for such surveys no evidence of either protected species was found nor does there appear to be a reasonable likelihood of them being present in the building. The works proposed in the subdivision of No. 11 would not be such as to adversely affect any species that may be present there. Consequently, I consider it unlikely that the appeal proposal would have an adverse affect on any identified protected species and it would not be either appropriate or necessary to impose the condition suggested by the Council to undertake a further survey. In any case statutory protection would apply to any that are present.

14. The Council's Tree Officer states that the tree on the site, which is subject to a Tree Preservation Order (TPO), is diseased and in decline and that its retention is not justified. I see no reason to take an alternative view. Therefore, there would be no harm to the character and appearance of the area by the removal of the tree subject to it being replaced by another on the site.

Conditions and Conclusion

15. The Council has suggested a number of conditions which it considers would be appropriate were I minded to allow the appeal. Where necessary, I have amended, amalgamated or replaced some of the Council's suggested wording for clarity, to more closely reflect the circumstances of the appeal proposal or to reflect the advice in Circular 11/95.

16. In order to ensure that the development is sympathetic to the character and appearance of the area, the walls and roof of the new dwelling should be constructed of natural stone and natural blue slate respectively and samples of the materials should be submitted and agreed. Conditions are also necessary to ensure appropriate hard and soft landscaping is provided and the removed tree subject to a TPO is replaced, in the interest of the character and appearance of the area. In order to maintain highway safety, conditions are required to ensure that the access into the site and the parking/manoeuvring arrangements are satisfactory, that there is sufficient space to allow a vehicle to pull off the road in order to open any gates and that sufficient space is provided for the storage and loading/unloading of plant and materials requisite for the development.

17. A condition to restrict the times when work can take place is necessary in order to safeguard the living conditions of neighbours, particularly given the proximity of the proposed new dwelling to the rear boundary of the properties on Low Leighton Road. Any piling which might be required would be covered by this condition and I consider that it would be reasonable to apply the same time restriction. Therefore, the separate condition suggested by the Council is unnecessary. The appeal site is adjacent to a historic landfill site, formerly used as a quarry and latterly for industrial use. Therefore, in the interests of public health it is necessary to assess the nature and extent of any contamination found on the site and to ensure that any contamination is dealt with accordingly. The condition imposed would allow the Council to exercise appropriate detailed control over the investigation, reporting and remediation stages. I have also had regard to the consultation response from the utility company regarding drainage. As full details have not been provided I consider that it would be both necessary and reasonable to require details of surface water and foul drainage to be submitted and agreed before development commences.

18. There is no evidence to indicate the presence of protected species on the site. Therefore, it would be neither appropriate nor necessary to impose a condition in this respect. Circular 11/95 indicates that conditions restricting permitted development rights should only be imposed in exceptional circumstance and there is nothing to suggest that these exist in this case. Therefore, I am not persuaded that the Council's suggested condition in this respect is necessary or reasonable. For the avoidance of doubt and in the interests of proper planning, a condition requiring the development to be implemented in accordance with the approved plans is necessary.

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

Beverley Doward

INSPECTOR

Attached – schedule of conditions

CONDITIONS

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

2) The development hereby permitted shall be carried out in accordance with the following approved plans: No's 226.10 revision A, 226.11 revision A, 226.08, 226.09, 226.12 revision A, 226.06, 226.07, 226.04, 226.05, MAR_1206_ P001 REV A and 10-036-P002.

3) The materials of external construction shall be natural stone to the walls with natural blue slate to the roof.

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

5) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The submitted details of the hard landscape works shall include hard surfacing materials, the position, design and type of any boundary treatment. The submitted details of the soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme. All hard and soft landscape works shall be carried out in accordance with the approved details. No occupation of the new build dwelling and newly created dwelling from the sub division of No. 11 hereby approved shall take place until the approved hard landscape works have been carried out.

6) All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwelling 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 in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

7) No development shall take place until details of the size, type and location of the tree to replace that covered by the High Peak Borough Council (Marsh Lane, New Mills) Tree Preservation Order 1989 has been submitted to and approved in writing by the local planning authority. The approved tree shall be planted within 3 months from the date the tree the subject of this TPO was felled or, if this period does not fall within a planting season by 31st December following.

8) Prior to the commencement of any other operations the existing access to Marsh Lane shall be modified, laid out and constructed in accordance with the approved plans and provided with 2.4m x 43m visibility splays in both directions. The area in advance of the sightline shall be free from any obstruction to visibility over 1m high (0.6m in the case of vegetation)

relative to the nearside carriageway level and shall be retained as such thereafter.

9) Prior to the commencement of any other operations (excluding demolition/site clearance and the access work referred to in Condition 8), space shall be provided within the site curtilage for the storage of plant and materials in accordance with details which shall have been submitted to and approved in writing by the local planning authority and shall be retained throughout the development period.

10) No occupation of the new build dwelling and newly created dwelling from the sub division of No. 11 hereby approved shall take place until precise details of the parking/manoeuvring arrangements for the occupiers and their visitors have been submitted to and approved in writing by the local planning authority and the details as agreed have been provided and made available for use. Once provided they shall be retained as such thereafter.

11) No gates or other barriers shall be erected within 5m of the nearside highway boundary and any gates shall open inwards only.

12) No work in connection with the implementation of the development hereby permitted (including demolition) shall take place outside the hours of 07.00 to 19.00 Mondays to Fridays, 08.00 to 13.00 on Saturdays and at any time on Sundays and Public Holidays and all deliveries to the site shall be limited to within the above hours.

13) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.
If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

14) No building hereby permitted shall be occupied until surface water and foul drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority.