
Appeal Decision

Site visit made on 10 November 2015

by Elizabeth Pleasant BSc(Hons) DipTP MRTPI

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

Decision date: 11 February 2016

Appeal Ref: APP/K2420/W/15/3103270

28 Lutterworth Road, Burbage, Hinckley, Leicestershire LE10 2DN

- 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 Mrs Rebecca Dawe against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 14/01121/FUL, dated 7 November 2014, was refused by notice dated 4 February 2015.
 - The development proposed is 1 No. proposed dwelling on garden land to rear of No.28 Lutterworth Road, Burbage.
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Decision

1. The appeal is allowed and planning permission is granted for 1 No. proposed dwelling on garden land to rear of No 28 Lutterworth Road, Burbage, Hinckley, Leicestershire LE10 2DN in accordance with the terms of the application, Ref 14/01121/FUL, dated 7 November 2014, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mrs Rebecca Dawe against Hinckley & Bosworth Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. Since the Council issued the decision on the planning application, Government policy in relation to tariff style planning obligations for social infrastructure has changed. The Council now takes the view that a contribution towards play and open space provision should be made and the appellant has had an opportunity to comment on this. I therefore address this issue below.

Main Issues

4. The main issues in this case are:
 - The effect of the proposed development on the character and appearance of the area;
 - The effect on the living conditions of 22 Lutterworth Road, with particular regard to noise and disturbance; and on 28 Lutterworth Road, with particular regard to amenity space.

- Whether or not a contribution towards social infrastructure should be provided, and, if so, whether appropriate arrangements have been made.

Reasons

Character and appearance

5. The proposed dwelling would be set well back from the road and have no visual impact on the general linear form of development along this section Lutterworth Road. As established by the Inspector considering the previous appeal on the site¹, there are a variety of house types in the locality. These include both forming the street frontage, and those populating areas of the hinterland behind. The proposed development would, with its garaging and turning area occupying the frontage and the main dwelling being set behind, generally conform to this established pattern of development. As such it would not detract from the character or appearance of the area as a whole. The proposed car barn and hard standing on the site frontage would be typical of the garage and parking arrangements found at many residential properties, and would not detract from the visual qualities of the street scene. Furthermore, I note that the Local Highway Authority have not raised any objections to the parking and turning arrangements proposed.
6. The proposed dwelling would be physically divorced from its parking area by some distance. However, given the character of the area I have identified above, this in itself is no basis to justify a conclusion of harm to the appearance of the area.
7. I therefore conclude, for the reasons set out above, that the appeal proposal would not result in an uncharacteristic layout, or form of development that would be inappropriate and harm the character of the area. The proposal complies with Policies BE1 (a) and RES5 of the Hinckley and Bosworth Local Plan, 2001 (Local Plan) and the Council's adopted SPG and Burbage Village Design Statement (BVDS) all of which are consistent with paragraph 64 of the National Planning Policy Framework (the Framework) in seeking to ensure that new development is well designed and complements or enhances the character of the surrounding area. The Council have also sited conflict with paragraph 53 of the Framework; however this paragraph suggests that Councils should prepare policies relating to residential development in gardens rather than setting out the policy guidance itself. I therefore find no conflict with this paragraph.

Living Conditions

8. The proposed parking and turning area would be situated at the front of the site with access directly off Lutterworth Road. It would lie between the gable walls of the neighbouring properties, Nos. 28 and 22 Lutterworth Road. This area is currently used for the parking of cars and has a small garage on it. The existing garage would be demolished and the car barn constructed slightly further back on the site to allow for the parking and manoeuvring of vehicles in front of it.

¹ Reference: T/APP/K2420/A/99/1035262/P8

9. The gable wall of the No 22 is situated about 2m away from the parking and turning area and it has two living room windows at ground floor level and a further window at first floor overlooking this area. The site boundary is delineated by a brick wall and hedgerow and No 22 have a small shed on the land between the facing gable of their property and the wall. This gable currently overlooks the existing driveway and garage to No 28. The appeal proposal would intensify the use of this area by a further two vehicles. The ground floor living room windows are secondary windows which are currently afforded some screening of the site by the brick wall and a hedgerow. The appeal proposals seek to replace the hedgerow with a 1.7m high fence and 0.4m trellis on top, which would provide a more solid screen and acoustic barrier. I am satisfied that with this boundary treatment, given the nature of the facing windows and the intensification in use of the extended hardstanding area by a maximum of two vehicles, would not result in any demonstrable or significant harm, by reason of noise and disturbance to the living conditions of No 22.
10. The proposed site layout differs from the layout previously considered by the Inspector in the appeal decision cited above. The parking and turning area now proposed is positioned on the site frontage and there is no opportunity for vehicles to drive down the side of the rear garden of No 22. The harm then found from the creation and use of an access running along the whole length of the side boundary of No 22 would no longer exist. Furthermore, the screen fence and secured through condition, would prevent headlight glare to the facing gable windows as well as attenuate noise from vehicles manoeuvring.
11. Access to the front of the proposed dwelling would be via a new footpath which would run adjacent to the proposed garden of No 28 Lutterworth Road. The appeal proposals indicate that the proposed garden and patio area retained for No 28 would be enclosed by a 1.8m high fence. I am therefore satisfied that the location of this footpath would not result in any undue loss of privacy to the occupiers of No 28 nor cause harm to their living conditions.
12. The private garden area available for No 28 as a result of the appeal proposal would be significantly reduced in area. However, the property would retain a modest, usable private patio and garden area, of a size which reflects the guidance on private gardens set out in the Council's adopted Supplementary Planning Guidance for New Residential Development (SPG). In addition, a communal allotment area is also proposed within the site for the use of the occupiers of No 28 and the future occupants of the appeal proposal.
13. I conclude that the appeal proposal would not cause significant or demonstrable harm to the living conditions of No 22 Lutterworth Road by noise or disturbance. Moreover, living conditions of occupiers of No 28, through appropriate amenity space provision would be safeguarded. The development therefore complies with Policy BE1 of the Local Plan which seeks, amongst other criteria, to ensure that the living conditions of neighbouring properties are safeguarded.

Social Infrastructure Contribution

14. During the appeal process a signed and completed Unilateral Undertaking (UU) has been submitted. It requires the appellant to make a financial contribution of £1,250.80 towards play and open space provision at Britannia Road Recreation Ground. The support for the contribution is set out in Policies IMP1

and REC3 of the Local Plan and the Play & Open Space Guide, Supplementary Planning Document 2008 (SPD).

15. It has been brought to my attention that the Council's Green Space Strategy (2005-2010) may be out of date as it provided a five year strategy for improving parks and countryside in the Borough. The Strategy states that it is for at least 5 years and a Play and Open Space SPD has been subsequently adopted in 2008. Although some doubt is raised by the appellant on the number of contributions that may have already been made towards Britannia Road Recreation Ground since 2010, I have no reason to dispute the evidence provided by the Council. I am satisfied on the basis of the information provided that the requirement for such a provision is necessary, directly related and fairly and reasonable related in scale and kind to the proposed development.
16. A signed and completed UU has been provided and the appeal proposal therefore complies with Policies IMP1 and REC3 of the Local Plan and the SPD which seek to ensure that new development makes an appropriate contribution towards the provision of necessary on or off-site infrastructure. On the same basis it would comply with Regulations 122 and 123 of the Community Infrastructure Levy and I am therefore able to take it into account.

Other Matters

17. I have considered the concerns raised by Burbage Parish Council and other local residents regarding the safety of the site access and road conditions on Lutterworth Road. The proposed access arrangement will improve the visibility available from the existing access serving 28 Lutterworth Road and vehicles will have adequate space available to park on, as well as to enter and leave the site in a forward gear. The Local Highway Authority have not raised any objections on highway safety grounds and I am satisfied that the proposal would not result in any substantial harm to the safe and efficient operation of the highway network in the vicinity of the site.
18. Concerns have also been raised regarding the accessibility of the site to emergency vehicles. However the Council have not raised this as a specific concern and I do not have any substantive evidence which would enable me to give this matter any more than limited weight.
19. Neighbouring residents have raised concerns regarding the loss of privacy, daylight and security to their properties as a result of the proposed development. The Council did not consider that the proposed development would harm these interests nor did they raise concerns over the design of the dwelling itself. From my inspection of the site I concur with the views of the Council.
20. I have considered concerns regarding the loss of a green space, trees and a wildlife habitat. The oak tree which is protected by a Tree Preservation Order would be safeguarded and although a number of other smaller trees and shrubs would be removed to facilitate the development the boundary hedgerows and trees would remain. Overall I am satisfied that there would not be any significant harm to interests of biodiversity.
21. Finally, it has been put to me that there is a discrepancy with the submitted plans. Both proposed drawing no's: AVD-LRB-PL06 and AVD-LRB-PL11 were

superseded by proposed drawing no's AVD-LRB-PL06 Rev B and AVD-LRB-PL11 Rev A prior to the Council determining the application. It is these revised drawings that I have before me and they are consistent in relation to the proposed location of the car barn.

Conditions

22. The Council has suggested a number of conditions which I have considered against the advice in the Framework and Planning Practice Guide. As a result, I have amended some of them for clarity, consistency and elimination of duplication.
23. I have attached a condition specifying compliance with the approved plans for the avoidance of doubt and in the interests of proper planning. Conditions 3, 4 & 5, stipulating details of tree protection measures, submission of samples of materials and details of landscaping are required to ensure the trees on the site are adequately protected and to safeguard the character and appearance of the area.
24. Conditions 6 and 9, requiring prior provision of boundary treatments and alterations to No 28 Lutterworth Road, have been imposed to ensure that the living conditions of the neighbouring properties are protected. Similarly conditions 7 & 8, requiring prior provision of access and turning facilities are necessary in the interests of highway safety.

Conclusion

25. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

Elizabeth Pleasant

INSPECTOR

Schedule of 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: Site Location Plan AVD-LRB-LP01 Rev A; Proposed Layout AVD-LRB-PL01 Rev F; Block Plan AVD-LRB-PL02 Rev B; Demolition Plan AVD-LRB-PL03 Rev A; Tree Removal and Retention Plan AVD-LRB-PL04 Rev B; Hard & Soft Landscaping AVD-LRB-PL05 Rev B; Land Constraints Plan AVD-LRB-PL06 Rev B; Access Details AVD-LRB-PL07 Rev B; Proposed Floor Plans & Elevations AVD LRB PL08 Rev B; Proposed Section Elevations AVD-LRB PL09 Rev C; Proposed Section Elevations (2) AVD-LRB-PL10 Rev B; Proposed Section Elevations (3) AVD-LRB-PL11 Rev A; Car Barn Plans & Elevations AVD-LRB-PL12 Rev A; Existing & Proposed Plans for No 28 AVD-LRB-PL13 Rev A.
- 3) No site clearance, preparatory work or development shall take place until a scheme for the protection of the existing trees (the tree protection plan), identified to be retained on the approved tree removal and retention plan, and appropriate working methods (the arboricultural method statement), in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837:Trees in relation to design, demolition and construction –Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees and arboricultural method statement shall be carried out as approved.
- 4) No development shall take place until details 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.
- 5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the dwelling or in accordance with a programme otherwise agreed in writing with the local planning authority.

- 6) All boundary treatments shall be carried out in accordance with the approved details. They shall be constructed prior to the occupation dwelling and maintained thereafter.
- 7) The dwelling shall not be occupied until the vehicular access has been constructed in accordance with the approved plans and with 1m x 1m pedestrian visibility splays provided on both sides of the access on the highway boundary. The splays shall be maintained free from all obstructions greater than 0.6m above the ground level of the adjacent footway.
- 8) The dwelling shall not be occupied until the car parking and turning facilities have been laid out and surfaced in accordance with the approved plans, and that space shall thereafter be kept available and free from obstructions for the parking and manoeuvring of vehicles.
- 9) The dwelling shall not be occupied until the alterations to 28 Lutterworth Road have been carried out in accordance with approved Drawing No. AVD-LRB-PL13A.