



Appeal Decision

Site visit made on 5 February 2019

by Sarah Manchester BSc (Hons) MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 14th March 2019

Appeal Ref: APP/T2350/W/18/3216184

32 Hall Street, Clitheroe BB7 1HJ

- 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 A Graham of Smart Property Investment & Management against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2018/0435, dated 17 May 2018, was refused by notice dated 5 October 2018.
 - The development proposed is demolition of existing property and associated outbuildings and proposed erection of 6 no. 3-bed town houses.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr A Graham of Smart Property Investment and Management against Ribble Valley Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposed development on
 - i) the character and appearance of the area, and
 - ii) the living conditions of the occupiers of neighbouring properties, with particular regard to daylight and outlook.

Reasons

Character and appearance

4. The appeal site comprises a residential property and associated large garden with outbuildings. It is located to the rear of modern 2 and 3 storey properties on Copperfield Close. It is accessed from Hall Street, a primarily residential road with traditional terraced properties. Despite the mixture of housing types in the area, there is nevertheless a degree of consistency in terms of character and appearance as a result of the arrangement and grouping of similar styles of properties. Ribblesdale Wanderers Cricket and Bowling Club borders the site to the north and east, and the appeal site garden contributes to the open undeveloped character of this part of the area.

5. The proposed development is the demolition of the existing property and garden buildings and the erection of six 3 bedroom dwellings. Properties would be 2 storey and arranged in 2 perpendicular blocks, each with 1 detached and a pair of semi-detached dwellings. They would be of a relatively simple design with pitched roofs and small front entrance porch projections. Front elevations of all properties, and the south facing gable end of unit 4, would be finished in stone. All other elevations would be rendered. Rear gardens would be enclosed by 1.8 metre close-boarded timber fencing. There would be 2 car parking spaces for each dwelling.
6. Although maximising the use of the available space, the proposed arrangement of properties would not be in keeping with the character and appearance of residential development in the area. Plots 1 to 3 would not be a continuation of the adjacent terrace but would nevertheless be an incongruous and discordant addition to the end of Hall Street. Plots 4 to 6 would be tightly spaced, in close proximity to site boundaries, and at right angles to the arrangement of properties on Springfield Close. Consequently, the proposed development would not be sympathetic, or relate well, to surrounding built development.
7. While the appeal property is set back near to existing residential development, the large garden is adjacent to open recreational spaces and the rear gardens of properties on Springfield Close. The proposed layout would result in the gable ends of plots 4 and 6 being located close to garden and bowling club boundaries. As a result of their height and proximity, the gable ends would result in an awkward interface and unsympathetic relationship between the proposed development and the adjoining land uses.
8. By virtue of its design, density and layout, the proposed development would result in harm to the character and appearance of the area. It would be in conflict with the development plan, specifically Policy DMG1 of the Ribble Valley Borough Council Core Strategy 2008 – 2028 adopted December 2014. This requires, amongst other matters, that development should be sympathetic to existing and proposed land uses, paying particular regard to its appearance and relationship to its surroundings.

Living conditions

9. The proposed development would be immediately behind Copperfield Close. Although Plots 1 to 3 would have first floor windows facing Springfield Close, there would be sufficient separation between properties to avoid close overlooking or loss of privacy between facing windows. However, the small garden spaces to the rear of plots 1 to 3 would be overlooked to some degree by first floor windows in rear elevations of Springfield Close. The need to provide for vehicle access and parking to the rear of plots 1 -3 would result in noticeably smaller private garden space for plots 2 and 3 than for the remaining plots. The modest size of the gardens and their relationship to neighbouring properties would result in a reduction in usable space. While there are properties in the areas with limited private outdoor space, these tend to be traditional terraced properties and not more modern family dwellings as are proposed here. Although the Council does not have published guidance on garden space standards, the small overlooked rear gardens of plots 2 – 3, in particular, with vehicular access for neighbouring properties to the rear, would not meet the standard of living conditions that future occupiers might reasonably expect.

10. As a result of the density and layout of the proposed development, the gable end of plot 4 would be in close proximity to the rear boundary fences of Nos 32 and 33 Springfield Close. These 3 storey properties have habitable room in the rear elevations, including first floor living rooms. The proposed blank 2 storey gable would be in close proximity to the boundary fence and approximately 13 metres from the rear-facing windows of these properties. The Council does not have published guidance on acceptable separation distances between habitable room windows and gable ends. However, while traditional terraced properties tend to be closely spaced, more modern detached and semi-detached properties in the area are generally more widely separated. In this case, as a result of its height and proximity to the boundary, the proposed 2 storey gable end would be visually obtrusive and would be an overbearing form of development when viewed from the principal windows of habitable rooms in Nos 32 – 33 Springfield Close.
11. The proposed gable end of plot 4 would be on the northern side of the rear gardens of Nos 32 – 33 and would not result in significant overshadowing. However, my observation is that the parts of these gardens closest to the appeal site are likely to benefit from higher levels of light and sunlight than those parts in closer proximity to the 3 storey elevations, and consequently could be expected to be enjoyed by the occupiers of those properties. By virtue of its height and proximity to the boundary, the proposed gable end would be an overbearing form of development and would harm the living conditions of the occupiers of these properties when using their gardens.
12. I find that the proposed development would harm the living conditions of the occupiers of neighbouring properties as a result of loss of outlook and an overbearing form of development. The living conditions of the future occupiers of plots 2 – 3 would also be harmed as a result of the small garden space provided. The appeal scheme would be in conflict with Policy DMG1 of the Core Strategy which requires, amongst other matters, that development does not adversely affect the amenities of the surrounding area including providing adequate day lighting and privacy distances.

Other matters

13. The Council's locational strategy is set out in Key Statement DS1 of the Core Strategy. This directs the majority of new housing to principal settlements including Clitheroe. In this respect, the proposed development is in a suitable location for new residential development. However, the Council is able to demonstrate a 5 year housing supply, and the provisions of paragraph 11 of the National Planning Policy Framework do not therefore apply.

Conclusion

14. For the reasons set above, I conclude that the appeal should therefore be dismissed.

Sarah Manchester

INSPECTOR



Costs Decision

Site visit made on 5 February 2019

by Sarah Manchester BSc (Hons) MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 14th March 2019

Costs application in relation to Appeal Ref: APP/T2350/W/18/3216184 32 Hall Street, Clitheroe BB7 1HJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr A Graham of Smart Property Investment and Management for a full award of costs against Ribble Valley Borough Council.
- The appeal was against the refusal of planning permission for the demolition of existing property and associated outbuildings and proposed erection of 6 no. 3-bed town houses.

Decision

1. The application for an award of costs is dismissed.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application is seeking to recover the full costs incurred in the appeal process. The applicant considers that the Council behaved unreasonably because the appeal site is within a principal settlement for the purposes of Core Strategy key statement DS1, and Council Members refused permission contrary to the professional advice received and without adequate reason to do so.
4. Council Members were entitled not to accept the professional advice of Officers so long as a case could be made to the contrary. In this case, the Council exercised its planning judgement based on local knowledge and representations from local residents, and concluded that the proposed development would be in conflict with development plan Policy DMG1. As can be seen from my appeal decision, I agree with the Council. Notwithstanding that the appeal site is in a location that is suitable for new residential development, the Council's decision was therefore not unreasonable.
5. The applicant exercised a right of appeal but planning permission was not unjustifiably withheld given the harm I have found. The parties are expected to meet their own costs in the appeal process. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Sarah Manchester

INSPECTOR



Appeal Decision

Site visit made on 22 January 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2019

Appeal Ref: APP/T2350/W/18/3214602

Eatoughs Barn, Fleet Street Lane, Ribchester, UK, PR3 3XE

- 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 Robert Midgley against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2018/0447, dated 10 May 2018, was refused by notice dated 11 October 2018.
 - The application sought planning permission for change of use from barn to dwelling, including alterations to elevations to reduce number and size of window and door openings, without complying with a condition attached to planning permission Ref 3/2017/0765, dated 28 September 2017.
 - The condition in dispute is No 6 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order revoking and re-enacting that Order, the dwelling hereby permitted shall not be altered or extended, no new windows shall be inserted, no alterations to the roof shall be undertaken and no buildings or structures shall be erected within the curtilage of the dwellings hereby approved unless planning permission has first been granted by the Local Planning Authority.
 - The reason given for the condition is: To enable the Local Planning Authority to exercise control over development which could materially harm the character and visual amenities of the immediate area in accordance with Policy DMG1 of the Ribble Valley Core Strategy.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from barn to dwelling, including alterations to elevations to reduce number and size of window and door openings at Eatoughs Barn, Fleet Street Lane, Ribchester, UK, PR3 3XE in accordance with the application Ref: 3/2018/0447 dated 10 May 2018, by varying condition 6, previously imposed on planning permission Ref: 3/2017/0765 dated 28 September 2017 and subject to the conditions in the attached schedule.

Background and Main Issue

2. The site has a planning history including a number of planning permissions for the conversion of the barn to a dwelling, the most recent being that subject of the appeal which it appears, on the basis of my site observations is in the process of being implemented.

3. The Council considers that removal of the condition would allow significant alterations and extensions to be carried out which could materially harm the character and appearance of the converted barn and the surrounding landscape. The appellant contends that the condition does not meet any of the 'six tests' for conditions set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG).
4. Therefore, on the basis of the above and submitted evidence, I consider the main issue is whether the condition is necessary, relevant to planning and; to the development to be permitted; enforceable; precise and; reasonable in all other respects.

Reasons

5. The appeal building is a mid-19th century two storey stone barn located in an open countryside location in close proximity to the former farmhouse with which it was historically and functionally connected. The barn is located off a private lane however, at my site visit I observed that there is a public right of way (PROW) which passes the site along the lane.
6. Policy DMH3 of the Ribble Valley Borough Council Core Strategy 2008-2028 A Local Plan for Ribble Valley (Core Strategy) seeks to protect the open countryside and designated landscapes from sporadic or visually harmful development in order to deliver sustainable patterns of development. Policy DMH3 sets out the limited circumstances under which planning permission for new development in the open countryside will be granted including, amongst others, the appropriate conversion of buildings to dwellings providing they are suitably located and their form and general design are in keeping with their surroundings. Policy DMH4 of the Core Strategy relates to the conversion of barns and other buildings to dwellings and sets out criteria which must be met, including amongst others, that the character of the building and its materials are appropriate to its surroundings and the building and its materials are worthy of retention because of its intrinsic interest or potential or its contribution to its setting.
7. The appellant contends that the building was substantially renovated around 2005 and is therefore essentially a modern building. I have had regard to a previous Inspector's decision in respect of an earlier proposal for conversion of the barn. However, I have little information about the former appearance of the barn including an aerial photograph from 1976 and the existing elevation drawings. Whilst the building may have little historic interest in terms of physical features, it seems to me that in granting planning permission for its conversion the Council must have determined that the building was worthy of retention in accordance with Policy DMH4 of the Core Strategy.
8. The PPG and the Framework advise that conditions restricting future permitted development rights should only be used in exceptional circumstances. However, exceptional circumstances are not defined and therefore it is necessarily a matter of planning judgement.
9. Whilst it may be the case that the appellant is unlikely to go to the expense of converting the barn in accordance with the permission and then subsequently make alterations to reflect the design of a previously refused scheme, the effect of removing the condition would be that various relatively significant alterations could be carried out to the barn. The Council's Statement provides

examples of development that could be carried out as permitted development which includes, single and two storey extensions, dormer windows and large curtilage buildings.

10. In this context, and exceptionally, I consider that the removal of permitted development rights relating to the barn is justified in order to safeguard the character and appearance of the barn. Whilst I appreciate that wider public views of the site are limited and the visual impact of such alterations would be reasonably localised in its extent, I consider they could nevertheless cause significant harm to the character and appearance of the building as a converted barn. That the building is not a listed building or in an Area of Outstanding Natural Beauty (AONB) are not matters which alter my judgement.
11. I have had regard to the previous permissions for conversion and whilst the arrangement and extent of openings were different to that being implemented it seems to me, overall, that they would respect the original character of the building. Therefore, the existence of these permissions does not weigh in favour of the proposal.
12. However, whilst I accept that curtilage buildings could be reasonably large and would to some extent effect the setting of the barn, given the appearance of the barn would be retained, I consider there are no exceptional reasons why permitted development rights in respect of curtilage buildings should be removed and I have varied the condition accordingly.
13. I agree with the appellant that it would have been preferable if the Council specified the relevant part and classes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) which they were seeking to restrict however, the condition does specify the matters which they are seeking to control and in this respect the condition is sufficiently precise. In varying the condition, I have specified the part and classes of permitted development which the condition controls. By reference to the GPDO it is clear that the condition relates to planning and those matters which constitute development. On this basis and for the reasons given above, having regard to advice in the Framework and the PPG, I find that the condition is reasonable and necessary, relevant to planning and; to the development permitted; precise and enforceable.
14. In refusing the application the Council referred to Policies DMG1, DMH3, DMH4 and Key Statement EN2 of the Core Strategy however, the proposal is not for alterations or extensions to the property and as such I consider these policies are not directly relevant to the main issue and weigh neither for nor against the proposal.

Other Matters

15. The misgivings expressed by the appellant about the way the Council dealt with a previous application are separate from the planning merits of the proposal and they have no bearing on the outcome of this appeal.
16. The appellant has referred to the permitted development rights granted by Schedule 2, Part 3, Class Q(b) of the GPDO. However, whilst the starting point in determining proposals for such prior approval applications is that the permitted development right grants planning permission, that is subject to the prior approval of a number of matters including the design or external

appearance of the building. Therefore this is not an unqualified right. Furthermore, Part 1 permitted development rights do not apply if permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class Q. Therefore, this matter is of limited weight.

17. Article 4(1) of the GPDO 2015 provides that, if the Secretary of State or a local planning authority is satisfied that it is expedient that any development described in any Part, Class or paragraph of Schedule 2, with exceptions for Part 17, should not be carried out unless permission is granted on application, they may make a direction that the permission granted by Article 3 does not apply to all or any development of the Part, Class or paragraph in an area specified; or any particular development falling within that part of the paragraph, known as an 'Article 4 Direction'.
18. If an 'Article 4 Direction' were in place covering this part of the Borough relating to Part 1 rights, there would be no need to remove those rights by condition, similarly if the development was permitted and carried out under Part 3 Class Q(b) of the GPDO. Whilst the appellant refers to other properties retaining permitted development rights, existing permitted development rights can only be withdrawn retrospectively through the use of an 'Article 4 Direction'.
19. The appellant has referred to a number of planning permissions granted by the Council which appear to be for agricultural buildings. However, I have limited information and do not know the circumstances of those developments being permitted and therefore I give this little weight in my assessment. In any event I have considered the appeal scheme on its own merits.

Conditions

20. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The development was ongoing at the time of my visit and therefore I have omitted the standard time limit condition as this is no longer necessary. I have imposed a plans condition in the interests of certainty.
21. The Council have provided details in respect of those conditions where details have been submitted and approved but as the development is not complete these conditions have not yet been discharged. I have therefore imposed a condition which requires compliance with the approved details to ensure the development is completed in accordance with them. I have imposed a condition in respect of tree protection measures as they are required to protect trees and hedging throughout the duration of the construction works.

Conclusion

22. For the reasons given above and having regard to all matters raised, the appeal is allowed.

Felicity Thompson

INSPECTOR

Schedule of conditions

- 1) Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:

Proposed Plans - Drg. No: 17.16/10 - Rev: C

Proposed Elevations - Drg. No: 17.16/11 - Rev: C
- 2) The development shall be carried out in accordance with the following details approved by the discharge of condition application Ref: 3/2018/0112 dated 25 April 2018:
 - i) The external surfaces, including surfacing materials.
 - ii) Section details of each elevation.
 - iii) Window framing, glazing and glazing systems.
 - iv) Boundary treatments and retaining structures.
 - v) Bat access points and tiles.
 - vi) Barn owl box.
- 3) All tree works/tree protection shall be carried out in strict accordance with the submitted Arboricultural Impact Assessment prepared by Bowland Tree Consultancy Ltd dated September 2017. The specified tree protection measures shall remain in place throughout the construction phase of the development and the methodology hereby approved shall be adhered to during all site preparation/construction works.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking and re-enacting this Order with or without modification), no development other than that expressly authorised by this permission shall take place which would otherwise be permitted under Schedule 2 Part 1 Classes A, B, C, D and G of the Order.