

NEWBURY 17/01808/OUTD PINS Ref 3191372	Garden Land at 5 Normay Rise Newbury Mr and Mrs Power	Outline application for erection of dwelling with integral garage. Matters to be considered: Access.	WAP Ctte. Refusal	Allowed 22.5.18
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Application for costs

An application for costs was made by Mr & Mrs W Power against West Berkshire District Council. The application was refused.

Preliminary Matters

The application is in outline form with matters of layout, scale, appearance and landscaping reserved. As such, for the purposes of this appeal only access falls to be determined, and on which the local highway authority has raised no objections.

Subsequent to the planning application being submitted, but prior to the decision being issued correspondence between the two main parties shows that the description of the proposal was amended with reference to the terms 'four bedroom' and 'two storey' being deleted.

During the appeal process Policy HSG1 of the West Berkshire Council Local Plan Saved Policies 2007, referred to in the Council's reasons for refusal, has been superseded by the West Berkshire District Council Housing Site Allocations Development Plan Document (HSA) and Policy C1 thereto. This policy says that there is a presumption in favour of development and redevelopment within the Council's settlement boundaries. The appeal site falls within the Newbury settlement boundary as defined in HAS Policy C1 and the West Berkshire Core Strategy (CS).

Main Issues

The main issues are:

- 1) The proposal's effect on the character and appearance of the surrounding area, with particular regard to the size of the site;
- 2) Whether the proposal would provide for a satisfactory standard of living conditions for the dwelling's future occupiers, with particular regard to external garden space;
- 3) The proposal's effect on the living conditions at No. 5, with particular regard to overlooking; and
- 4) The effect of the proposal on surface water drainage.

Reasons

Character and appearance

The appeal site lies at the junction of Normay Rise and Willowmead Close, with the latter road climbing significantly away from this point. As such, the site's rear garden rises in level up to its common boundary with No. 2 Willowmead Close. It is proposed to sub-divide the plot with severance marked at approximately mid-point along the existing side fence.

A new vehicular access is proposed immediately beyond the proposed post and rail fence which would divide the two demarcated plots. Although an integral garage is provided these are no longer considered as car parking spaces by the Council due to the likelihood that they will not be used for this purpose. The site plan (drawing ref 352/P02) is at this stage only indicative but, in connection with the proposed access, it shows parking and turning space for three cars. The illustrative layout also shows the dwelling's front building line set well within the site and in line with that of No. 2.

The scale and layout of the proposed development does not fall to be determined at this stage and the depicted footprint on the site plan is purely illustrative for the purposes of this application. The Inspector accepted that the rear garden depth would be considerably less than that for the neighbouring dwellings along Willowmead Close but, whilst the proposal would be at odds with that characteristic, the plot's depth as a whole would satisfactorily accommodate a new dwelling and its plot width would be consistent with those along Willowmead Close. The above points are important determinants in this, the primary main issue, and on this basis he found that the proposed infill development would not be cramped and would be appropriate to its contextual setting.

Although residential garden, in urban or suburban areas, is not considered as brownfield or previously developed land (PDL) the development of such is not necessarily precluded providing the proposal satisfies other relevant planning policies and their aims. In this instance the Inspector found that the proposal would satisfy the objectives of Policy ADPP1 of the Council's Core Strategy (CS), although at this stage, in the absence of more specific details, it is not possible to fully assess the proposal's design qualities. That said, given the circumstances he had described, he was satisfied that, visually, the proposal would integrate well within the streetscene.

External garden areas are shown to the front and rear of the proposed dwelling. The site plan indicates that the available amenity space would total 120 sqm, although the Council disputes this calculation, instead indicating that the garden would total some 98 sqm. The Council's Supplementary Planning Document 'Quality Design – West Berkshire: Part 2 'Residential Development' (SPD) provides guidance on garden space for new housing and says that, as a general rule, for a 3 or more bed house, the associated garden should be at least 100 sqm. The Council has raised concerns on this matter but this is only a guideline and the Inspector found that the stated shortfall of 2 sqm would be negligible. Concern has also been raised regarding the garden's north facing orientation, yet this is in common with the various dwellings on the north side of Willowmead Close.

Prior to the submission of the application a tree survey of the site was undertaken. Three existing trees have been identified, all of which the Inspector understood are subject to a tree preservation order (TPO), and are to be retained. Accordingly, appropriate tree protection measures will be necessary in this respect and a condition can be imposed to this effect. It is intended that the existing coniferous hedge behind the garden fence would be cut back slightly, but this is consistent with general maintenance.

On this first main issue, he concluded that the proposal would not be harmful to the character or appearance of the surrounding area, and there would be no material conflict with the aims and requirements of CS Policies ADPP1 and CS14, HSA Policy C1, and design guidance within the Council's SPD, the Newbury Town Design Statement and also the National Planning Policy Framework (the Framework).

Living conditions (future occupiers)

As regards the area of garden itself, the Inspector found that an approximation of just less than the 100 sqm indicator would represent satisfactory provision and on this basis he was satisfied that the proposal would be able to provide adequate external garden area for the benefit of the dwelling's occupiers. The Council has indicated that the existing trees would restrict natural light entry to the garden which, in turn, would affect the garden's usability. However, at his site visit, he noted that only the oak tree to the front of the site would potentially affect light entry into the site and this would only realistically impact on the front curtilage, not the rear garden.

The cherry tree is sited in what would be the dwelling's rear garden, but this specimen is not as tall or imposing as the oak tree and is located close to the boundary with No. 7 Normay Rise. Neither is the maple tree which would remain in No. 5's rear garden. Accordingly, he concluded that the proposal would provide for a satisfactory standard of living conditions for the dwelling's future occupiers and there would be no material conflict with the aims and requirements of CS Policies ADPP1 and CS14, and design guidance within the Council's SPD, the Newbury Town Design Statement and also the Framework.

Living conditions (neighbouring occupiers)

The indicative layout plan would indicate that the dwelling would likely have a north / south dual aspect and, as such, the flank wall of the proposed garage and, behind, the east facing flank of the dwelling itself would face towards the truncated rear garden of No. 5 Normay Rise. The proposed configuration is not unusual and, indeed, it would reflect the resulting relationship with No. 2 beyond the site's common boundary. Given this, only the installation of first floor windows in the dwelling's flank wall could potentially give rise to overlooking of No. 5's rear garden. This, however, is a matter for the dwelling's layout and appearance and is not a consideration at this stage. That said, it would be expected that any such flank wall windows would light either a bathroom or landing, and these could be obscurely or part obscurely glazed, as necessary. Generally, the distance from the proposed dwelling's rear boundary would not represent an unacceptable arrangement, although he acknowledged that any future roof extensions proposed would need careful assessment and he addressed this matter later.

The Inspector concluded that the proposal would not be harmful to the living conditions at No. 5 Normay Rise and there would be no material conflict with CS Policies ADPP1 and CS14 and also relevant advice within the Framework.

Flooding

CS Policy CS16 says the development will only be permitted if it can be demonstrated that, amongst other things, appropriate measures to manage any flood risk can be implemented, although it is indicated that the site lies within Flood Risk Zone 1. Nonetheless, the policy goes on to say that on all development sites surface water should be managed in a sustainable manner through the implementation of Sustainable Drainage Methods (SuDS).

The Council is concerned that the appellant has not demonstrated that the proposal would not adversely impact on the sustainable drainage qualities of the site, and interested parties have raised this matter as an issue. The Inspector also noted that the Council's Sustainable Drainage team, a consultee, had not provided comments on the proposal by the time the committee report was drawn up.

In view of the sloping topography of the land the issue of drainage would clearly need to be explored and, in accordance the requirements of CS Policy CS16, the Inspector also imposed a condition requiring the submission of surface water drainage details for subsequent approval by the local planning authority.

Other Considerations

Interested parties, in particular, have raised objections that the 'garden suburb' character of the Andover Road area, as set out in the Newbury Town Council Design Statement, would be harmed by the proposal. The Inspector disagreed for the reasons he had already stated. Further, allowing this appeal would not set a precedent for future such proposals as each case has its own particular circumstances and is dealt with on its individual merits and/or resultant impacts. Noise and disturbance from the use of the site would not be an issue as the site is of adequate size to accommodate a single dwelling. Besides, the site is currently garden land and is used in an incidental capacity for the benefit of the occupiers of No. 5. A resident has raised concerns that the property could be used as a House in Multiple Occupation (HMO). This is unfounded but any use outside the parameters of Class C3 (Residential) would be subject to planning control by the Council. Finally, restrictive covenants are not material considerations in the determination of planning applications. If a piece of land is the subject of any such covenant then, if in effect, this would override any grant of planning permission.

Conclusion and Conditions

The local highway authority has raised no objections to the access shown for the proposed new dwelling and matters related thereto. For the above reasons, whilst having had regard to all matters raised, the appeal succeeds.

Subsequent to the decision notice's issue the Council has not suggested any specific conditions to be imposed, although the Inspector did have a list of conditions recommended in the committee report and its update. In the circumstances, he treated these as part of the Council's case and have considered them against the advice in the Planning Practice Guidance, re-wording and consolidating them, as necessary.

Certain pre-commencement conditions are imposed requiring submission and approval of aspects of the development that are not fully described in the application.

In addition to the standard time limitation conditions for outline planning permissions and the subsequent commencement of the approved development, in the interests of certainty he imposed a condition requiring that the development be carried out in accordance with the submitted plans. To ensure a satisfactory form of development a condition is imposed requiring the submission of samples of external materials for subsequent approval by the Council. A condition relating to the dwelling's floor levels in relation to nearby datum points is also included. These would be specifically addressed at the reserved matters stage, at which point a landscaping and planting scheme should be arrived at. Accordingly, a condition is imposed requiring for such. Also, in view of the TPOs at the site he imposed a condition relating to the commissioning of an Arboricultural Method Statement to ensure the protection of the said trees.

In order to ensure that the construction works are carried out appropriately and with minimal disturbance a condition requiring for a Construction Management Plan is imposed. To ensure a satisfactory standard of development a condition is imposed requiring for details of the sustainable disposal of surface water to be submitted to the local planning authority for written approval. A condition is also imposed requiring that

details relating to on-site parking, cycle storage, access and turning space are approved prior to occupation. In this connection conditions are added which require for the provision of appropriate visibility splays at the access point and that the vehicular access to the highway is properly surfaced.

Given the size of the site, the Inspector was satisfied that the final layout arrived at would not hold any significant implications for the living conditions of neighbouring occupiers. However, to enable the Council to have control over any roof extensions that might give rise to overlooking he imposed a condition removing permitted development rights in this particular regard.

Decision

The appeal is allowed and outline planning permission is granted for the erection of a dwelling with integral garage at 5 Normay Rise, Newbury, Berkshire RG14 6RY, in accordance with the terms of the application Ref 17/01808/OUTD, dated 21 June 2017, subject to the conditions set out in the attached Schedule.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of the approval of the last of the reserved matters to be approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of 3 years from the date of this outline permission.
- 3) Approval of the details of layout, scale, appearance and landscaping of the site (hereinafter called 'the reserved matters') shall be obtained from the local planning authority before any development is begun.
- 4) The development hereby approved shall be carried out in accordance with the following plans: Drawings Nos 352/E00, 352/P02 and 352/P04.
- 5) No development shall take place until samples of the external materials to be used for the construction of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of both hard and soft landscape works, including hard-surfacing materials and boundary treatments, have been submitted to and approved in writing by the local planning authority. Details of soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedule of plants, noting species, plant sizes and proposed numbers/densities where appropriate; and details of the existing trees to be retained, including their spread, girth and species. Development shall be carried out in accordance with the approved details prior to first occupation of the dwelling, or in accordance with a programme agreed with the local planning authority.
- 7) No development shall take place until a full Arboricultural Method Statement (AMS) has been submitted to and approved in writing by the local planning authority. The AMS shall include details of protective fencing (with reference to B.S. 5837:2012), implementation, supervision and monitoring of all temporary tree protection measures and any special construction works within any defined tree protection area. The works shall be implemented in accordance with the approved details.
- 8) No development shall take place until a construction management plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include details of hours of working and how demolition and construction traffic, vehicular access to the site, parking and manoeuvring, materials storage, wheel washing, and facilities for operatives, will be accommodated during the development. The development shall be carried out in accordance with the approved CMP.
- 9) The dwelling hereby permitted shall not be occupied until details of the parking, turning and access facilities have been submitted to and approved in writing, and fully implemented in accordance with the approved details. The parking, turning and access facilities shall thereafter be retained as such.

10) No development shall take place until visibility splays of 2.4 metres by 43 metres have been provided at the access. The visibility splays shall be kept free of all obstructions to visibility above a height of 0.6 metres above carriageway level.

11) No development shall take place until details of the surfacing arrangements for the vehicular access to the highway have been submitted to and approved in writing by the local planning authority. Such details shall ensure that bonded material is used across the entire width of the access for a distance of 3 metres measured back from the carriageway edge. The surfacing arrangements shall thereafter be constructed in accordance with the approved details.

12) No development shall take place until full details of cycle storage facilities have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with these details.

13) No development shall take place until details of both existing and proposed floor levels of the dwelling in relation to nearby datum points have been submitted and approved in writing by the Local planning Authority. The development shall be carried out in accordance with the approved levels.

14) Prior to the commencement of the development hereby permitted, surface water drainage details shall be submitted for approval in writing by the Local Planning Authority. Such details shall include an assessment of the potential for the disposal of surface water by means of a sustainable drainage system in accordance with the principles set out in the National Planning Policy Framework. The approved drainage scheme shall be implemented prior to the first occupation of the development.

15) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking, re-enacting or modifying that Order), no dormer windows which would otherwise be permitted by Schedule 2, Part 1, Class B of that Order shall be constructed in the roof of the dwelling hereby permitted, without planning permission being granted by the Local Planning Authority

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