



Appeal Decision

Site visit made on 31 October 2011

by **Graham Edward Snowdon BA BPhil Dip Mgmt MRTPI**

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

Decision date: 9 November 2011

Appeal Ref: **APP/H0738/A/11/2158360**

85 Junction Road, Norton, Stockton-on-Tees, Cleveland TS20 1PU

- 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 John Matthews against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 11/0115/FUL, dated 18 January 2011, was refused by notice dated 17 March 2011.
 - The development proposed is the erection of 2 no new dormer bungalows to existing residential site.
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Decision

1. The appeal is allowed and planning permission granted for the erection of 2 no new dormer bungalows to existing residential site at 85 Junction Road, Norton, Stockton-on-Tees, Cleveland TS20 1PU in accordance with the terms of the application, Ref 11/0115/FUL, dated 18 January 2011, subject to the following conditions:
 - (1) The development hereby permitted shall begin not later than five years from the date of this decision.
 - (2) The development hereby permitted shall be carried out in accordance with the following approved plans: 10-001/90-01, 02 and 03.
 - (3) No construction/building works (including demolition) or deliveries shall take place outside the hours of 08.00 to 18.00, Mondays to Fridays and 09.00 to 13.00 on Saturdays or at any time on Sundays or Bank Holidays.

Main Issue

2. The main issue is the effect of the proposal on the setting of the original dwelling and the character and appearance of the wider area.

Reasons

3. Policy CS3 in the Council's Core Strategy Development Plan Document (Core Strategy) sets out the Council's strategic policy relating to sustainable living and climate change. Among the requirements of this Policy is one requiring new developments to make a positive contribution to the local area, by
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protecting and enhancing important environmental assets including responding positively to existing features of natural or local character, including hedges and trees. Policy HO3, saved from the Stockton-on-Tees Local Plan (Local Plan), seeks to permit residential development within the defined limits of development, provided that, among other things, it is sympathetic to the character of the locality and takes account of and accommodates important features within the site.

4. The appeal site lies within a suburban residential area characterised by large detached and semi-detached properties of varying styles and ages, including significant recent infill development. Even within the context of large residential sites, 85 Junction Road has a particularly large garden, which provides an attractive and mature green lung within the area. Development of part of the garden has already taken place towards the road frontage, but the rear part of the garden, onto which the main elevation of the existing property faces, remains largely intact. This provides an open setting for the existing large two storey dwelling on the site and I accept that it provides a valuable function in this respect. However, permission has recently been granted (under ref. 11/0659/FUL) for the erection of a dormer bungalow within this area, which somewhat compromises the role of the garden as a setting for the main dwelling. I attach significant weight to this.
5. The appeal proposal, involving two dormer bungalows in the garden area, would not significantly alter the prevailing density in the wider area and I note that the Council accepts that each unit would be provided with sufficient amenity space, comparable to that provided for the two new units recently built on the wider site. Although the creation of two new plots would reduce the garden area of the existing dwelling, I consider that an appropriately large garden would be retained, which would be commensurate with the size of the property and provide extensive views for occupants out over a substantial green area. The proposal would not, as the Council suggests, have a significant detrimental effect on outlook from this dwelling.
6. The proposed bungalows would be located in a manner which would substantially respect and retain existing garden features, including mature vegetation. Concern has been expressed regarding the required removal of an existing willow tree on the site, which is protected by a tree preservation order. However, this tree has been substantially lopped, apparently with the approval of the Council, and appears to be dead and certainly no longer of any amenity or visual value. The design of the proposed bungalows, whilst being far from exceptional, are similar to the existing new bungalow on the site and that approved under the afore-mentioned permission. There is no objection from the Council to this aspect of the scheme and I agree that it is acceptable.
7. Taking into account all these factors, I am satisfied that the proposal would not have a detrimental effect on the setting of the original dwelling and the character and appearance of the wider area and there would be no conflict with either Core Strategy Policy CS3 or Local Plan Policy HO3.

Other considerations

8. Although not cited as a reason for refusal, in its statement, the Council refers to the "need" for a planning obligation in the form of a section 106 Agreement

providing a contribution towards the provision of open space, recreation and landscaping in accordance with Core Strategy Policy CS11 and the Council's Supplementary Planning Document 6; Planning Obligations (SPD6). There is no such agreement before me. I have now been supplied, on request, with a copy of Policy CS11 and SPD6. The former states that all new development will be required to contribute towards the cost of providing additional infrastructure and meeting social and environmental requirements. When seeking contributions, the policy indicates that the priorities will include the provision of open space, sport and recreational facilities. SPD6, however, makes it clear that there are no minimum thresholds below which planning obligations would not be sought and that proposals will need to be assessed on a case by case basis and will be the subject of negotiations based on the size, type, location and intended uses of the development, along with existing needs.

9. Whilst attaching significant weight to the provisions of Policy CS11 and SPD6, there is no satisfactory evidence before me to link the present proposal to an effect on infrastructure requirement or to justify the need for a planning obligation. Without this information, it is difficult to identify the harm that would result from the absence of a section 106 agreement. I have to conclude that the test under Regulation 122 of the Community Infrastructure Regulations 2010, whereby obligations have to be necessary to make the development acceptable in planning terms, has not been met. Accordingly, the absence of a section 106 Agreement does not represent a valid reason for the appeal to fail.
10. I am satisfied that the conditions on site, including the provision of dense vegetation close to the boundaries and the separation distances involved are sufficient to ensure that the proposal would not adversely affect the living conditions of neighbouring occupiers in terms of loss of privacy through overlooking.
11. In the event of the appeal being allowed, the Council has suggested the imposition of 5 conditions. The appellant has requested that the standard time limit for the commencement of development be extended to 5 years and the Council does not object to this. Given the state of the current housing market and government advice on the matter, I can see no objection to this and will impose a condition accordingly. I shall also impose a condition requiring the development to be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning. Access to the site from the highway would pass in close proximity to three existing dwellings and I agree with the Council, therefore, that a condition restricting the hours of construction works on site is necessary to protect the living conditions of occupiers. However, I do not consider that a case has been made out for the removal of permitted development rights in this instance. Circular 11/95 *The Use of Conditions in Planning Permissions* makes it clear that such rights should only be removed in exceptional circumstances.

Conclusion

12. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed and planning permission granted subject to the conditions stated.

G E Snowdon

INSPECTOR