

Appeal Decision

Site visit made on 23 August 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 12 September 2016

Appeal Ref: APP/H0738/W/16/3151074

1 Auckland Way, Stockton-on-Tees TS18 5LG

- 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 Sean Brockbank against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 15/0828/FUL, registered by the Council on 22 April 2015, was refused by notice dated 26 November 2015.
 - The development proposed is described as new bedroom house within the grounds of No' 1 Auckland Way, including forming new access from Green's Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. It would appear that the date on the application form is incorrect and I have therefore used the date the application was registered by the Council in the heading above.

Main Issues

3. The main issues raised by this appeal are the effect the proposal would have on the living conditions of occupiers neighbouring properties and the effect it would have on the character and appearance of the area, in particular its effect on protected trees on the site.

Reasons

Neighbours' living conditions

4. The appeal site is located between Greens Lane and 1 Auckland Way, although at a lower level than that property. It is bounded by the garden of 3 Auckland Way on one side and the Poplars, a split level dwelling, on the other.
 5. The proposed house would be orientated parallel to the boundary with No 3 with which it would be in close proximity to. The relative height of the elevation it would present towards the garden of No 3 would increase as the site and adjoining garden slope down towards Greens Lane. The south west gable of the proposed dwelling would face the rear elevations of Nos 1 and 3, albeit angled away from the former and towards the latter.
 6. The proposed kitchen and snug windows would directly overlook the rear garden of No 3 and the angle at which the south west gable elevation would be
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- positioned would enable occupiers of the proposed bedroom 1 to overlook the garden and rear elevations of Nos 1 and 3.
7. The view from the kitchen window would be unencumbered although a proposed timber slated screen would prevent most views from the snug window of the adjoining garden. However, the screen's offset position in relation to the window would allow oblique views over the garden in either direction. The proposed height of the dwelling relative to the adjoining garden would mean that it is not certain that existing or proposed boundary treatments would mitigate this overlooking to any great degree.
 8. A suitable boundary fence between the site and Nos 1 and 3 should prevent any overlooking from the ground floor snug window. The appellant considers that the windows to bedroom 1 would be "about 1.5 metre to the cill", however this is a height above which most adults standing up could have a clear view through the window rather than only a restricted or long distance view. Therefore these windows would not be placed so high that they would avoid overlooking. The angle of the rear elevation would not be such that overlooking of the rear windows or garden of No 1 would be avoided. An existing intervening tree would reduce overlooking of the rear windows of No 3 from bedroom 1 to a degree. However, there can be no certainty it would remain nor that it would effectively obscure all views from the proposed house, especially when not in leaf.
 9. The orientation and size of The Poplars is such that there would be considerably less harm from overlooking which could occur from the front elevation window of bedroom 1. The treatment of the stair windows could also limit any overlooking. However, the ground floor dining room and first floor corridor windows would overlook the courtyard to the front of The Poplars. Although the corridor would not serve a habitable room it would still enable views out and this would not reduce the harm which could result. Although the courtyard has a more public aspect of that property being situated at the front, the elevated nature of the proposed windows in relation that space would nevertheless result in a harmful loss of privacy, materially more intrusive than that which may occur as a result of passers-by looking into the property at (The Poplars') ground level.
 10. The combined effect of these circumstances would be one which would result in considerable overlooking. This would lead to a harmful level of intrusion and loss of privacy to, and consequently unacceptable harm to the living conditions of, the occupiers of the three surrounding dwellings.
 11. By way of mitigation the appellant has offered to partly or entirely obscure the glazing to the windows in bedroom 1. If this were combined with a restriction on opening those windows, this would reduce the likelihood of overlooking from this room, as such a treatment could do to others. However, it is not certain that as a consequence the living conditions of future occupiers of the proposed dwelling would not be harmed by a lack of outlook from the that bedroom. It would not be appropriate to attempt to require such mitigation by way of a condition under such circumstances and in any event would not resolve all the potential sources of overlooking. Furthermore, the suggestion that all windows facing neighbours could be omitted would be a significant change to the scheme and materially different to that which is before me.

12. The combination of the overall height of the proposed dwelling and proximity to the rear garden on No 3 would also create an overbearing effect, particularly when experienced from the lower reaches of the garden where occupiers could reasonably expect to relax and otherwise enjoy their garden without an unacceptable level of intrusion. The presence of an upper floor window, albeit screened, would exacerbate this intrusive effect. This would further compound the harm the proposal would cause to the living conditions of the occupiers of No 3.
13. Consequently the proposal would not accord with the National Planning Policy Framework's (the Framework) core planning principle¹ of always seeking to secure a high standard of design and a good standard of amenity for all existing and future occupants of land.

Character and appearance - trees

14. The proposed dwelling would be situated close to, and partly under the canopy of, a group of protected trees. These are of a considerable size and the group makes a significant and positive contribution to the area's character and appearance by virtue of their prominence on Greens Lane and beyond. This positive effect arises as a group in their own right and also as part of a more extensive area of trees and greenery which extend to the north west along the rear gardens of properties on Auckland Way. Although the Pre-development Arboricultural Report (PAR) considers that the trees are poor quality I note that the Council does not agree with this assessment.
15. The proposed dwelling would present large windows to the elevated ground floor living area and bedroom 2 in close proximity to these trees and would be located well under their canopy. Given the otherwise generally restricted nature of windows in other elevations, those in the north east elevation would be all the more important for providing more expansive views and receiving reasonable levels of light.
16. However these views would be compromised to a degree by the large intervening trunks of the trees and, even though their crowns appear to have been lifted, the likelihood of overhanging branches in time. The light entering these windows would already be affected by their northerly aspect and likely to be further limited by the extensive crown spread of the trees, particularly when they are in leaf.
17. Notwithstanding that they are protected, these circumstances would make it much more likely that there may be calls in the future from occupiers to prune or even fell the trees, particularly if safety were to become an issue which given their close proximity could become a concern. I do not agree with the appellant that the continual monitoring their proximity to the house would require would necessarily better ensure their protection or retention. The proposed situation of the dwelling in such close proximity to the trees would result in an unsatisfactory arrangement and one which would be likely to harm the long term survival of the trees with consequent considerable harm to the area's character and appearance.
18. As such the proposal would fail to comply with criterion 8. of Core Strategy Development Plan Document, 2010 Policy CS3 which requires proposals to

¹ Paragraph 17.

make a positive contribution to the local area by protecting and enhancing important environmental assets including trees.

Other Matters

19. Notwithstanding that the Council's officer's report considered that a "designed foundation would be used to limit root damage" the PAR is not conclusive that the construction method would avoid harm to the trees suggesting only that a pile and beam foundation *may* be suitable. It is not certain from the drawings exactly what the extent of excavations within the Root Protection Areas of the trees (as identified in the PAR) would be proposed such that it is not entirely certain that the proposed house design and construction methods would avoid harm to the trees. However, as the appeal is being dismissed on other grounds I have not pursued this matter further.
20. I note that a number of supporters of the proposal do so in the anticipation that the trees would be removed but for the above reasons I cannot agree with them. I note that the occupiers of The Poplars support the proposal, however I am mindful that occupiers may move in the future and others may not necessarily be of the same opinion and I have therefore considered the proposal on its merits.

Conclusion

21. For the above reasons, and having had regard to all other matters raised, the proposal would harm the living conditions of neighbours and the character and appearance of the area in light of its effect on protected trees, contrary to the development plan and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR