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## Appeal Decision

Site visit made on 23 July 2019

**by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI**

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

**Decision date: 25<sup>th</sup> November 2019**

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**Appeal Ref: APP/H0738/W/19/3227332**

**37 Birkdale Road, Hartburn, Stockton-on-Tees TS18 5LZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
  - The appeal is made by Mr Gary Devlin against the decision of Stockton-on-Tees Borough Council.
  - The application Ref. 18/2821/FUL, dated 30 November 2018, was refused by notice dated 7 March 2019.
  - The development proposed is for the construction of a detached 3-bedroomed dwelling with attached single garage and associated access.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The two main issues relevant to this appeal are the effect of the scheme on:
  - a) the living conditions of current and future occupants of neighbouring properties in respect of privacy and sunlight; and
  - b) the character and appearance of the area.

### Reasons

#### *Living Conditions*

3. The appeal site is part of a larger corner plot between Birkdale Road and Bellerby Road in the Hartburn area of Stockton-on-Tees which is an established residential neighbourhood. The development proposal is for the construction of a 2-storey 3-bedroom detached dwelling, together with garage, and front and rear gardens. It would sit between 35 and 37 Birkdale Road. The site is partially screened to Birkdale Road by hedging of varying height behind a low brick wall.
4. Each of the 2 rear bedrooms on the first floor of the proposed dwelling would overlook the rear of 41 Bellerby Road. I note that the appellant states that the appeal property would be around 24 metres from the rear of 41 Bellerby Road, and thus outside the Council's advisory minimum spacing standard of 21 metres expressed at paragraph 4.8.2 of the Supplementary Planning Document 1: Sustainable Design Guide 2011.
5. During my site visit I observed that there was a conservatory extending around 3-4 metres from the rear of 41 Bellerby Road which was not shown on the

appellant's plans. Thus, I cannot be sufficiently sure that the appellant's measurement is correct. Taking the conservatory into account the distance between it and the appeal property is likely to be less than indicated by the appellant.

6. With the above points in mind I find that there would be an inadequate level of separation between the principal facing windows of the two properties. Consequently, occupants at 41 Bellerby Road are likely to lose an unacceptable degree of privacy. In coming to this view, I acknowledge that the Council's advisory minimum spacing standard is to be applied flexibly having regard to the potential to offset any loss of privacy through landscaping and other suitable boundary mitigation measures. As matters stand at present, however, there are no trees or tall shrubs along the boundary of 37 Birkdale Road that would mitigate the effect of the appeal proposal. I would also add that, because of its siting and size, the appeal proposal will probably result in a loss of sunlight to the rear facing windows of 41 Bellerby Road during winter months to the material detriment of the living conditions of the occupants.
7. Because of the orientation of the appeal property the two bedrooms on the rear of the first floor would also overlook the patio area and back garden of the host property, 37 Birkdale Road. Due to the proximity between the windows and the patio it would be very difficult to see how this could be mitigated through any form of boundary treatment.
8. I acknowledge that the appellant, whom resides at 37 Birkdale Road, might be willing to accept this level of intrusion. However, as is made clear in paragraph 127 (f) of the National Planning Policy Framework (the Framework) and Policy SD8(d) of the Stockton-on-Tees Borough Council Local Plan 2019 (LP) planning decisions must have regard to future as well as current occupants. I have concluded, therefore, that the level of visual intrusion from the rear first-floor bedrooms of the appeal property would be unacceptable. Consequently, I find that the appeal proposal would cause harm to the living conditions of current and future occupants of 37 Birkdale Road and 41 Bellerby Road, contrary to Policy SD8 of the LP and to paragraphs 117 and 127 of the Framework which aim to ensure that development maintains a high standard of amenity.
9. I do not find that the appeal proposal would be detrimental to the living conditions of the current and future occupants on 35 Birkdale Road. I note from the appellant's plans and drawings that the appeal proposal does not include any windows on the south-east gable elevation. There would be some degree of overlook of the rear garden of 35 Birkdale Road but no more than is the case with any other adjacent property. However, this does not outweigh the harm that I have found.

#### *Character and Appearance*

10. I note the appellant's contention that because the garden of 37 Birkdale Road is considerably larger than most other gardens within the neighbourhood the appeal proposal, by filling in a 'gap', would act to harmonise, rather than disrupt, the existing pattern of development. The photomontage produced by the appellant in his statement showing the front (the south-western) and the side (north-western) elevations of the proposal tends to support this view.
11. Nevertheless, because of the site's triangular shape, there is insufficient land to the rear to accommodate a 2-storey dwelling without significantly disrupting

the sense of openness which characterises the back garden areas of properties on Birkdale Road and Bellerby Road. Consequently, I find that the appeal proposal would cause harm to the character and appearance of the area and is thus contrary to policy SD8 of the LP and to paragraph 127 of the Framework which seeks to ensure that new development is sympathetic to local character.

### **Other Matters**

12. The proposal is sited in a highly sustainable location. However, this does not outweigh my conclusions on the effect of the scheme upon the living conditions of those living nearby and upon the character and appearance of the area.
13. The appellant has referred me to two other relatively recent decisions in Stockton-on-Tees, one for the grant of planning permission on appeal in September 2016 for the construction of a detached dwelling at 22 Birchfield Drive, Eaglescliffe and the other for the grant of permission by the Council in October 2018 for the construction of a bungalow on land adjacent to 41 Cleveland Avenue, Norton.
14. Whilst the policies that apply to the determination of these proposals and the current appeal might be the same or very similar the specifics of the site and its surroundings will inevitably differ. In the Birchfield Drive appeal decision, the Inspector concluded that the proposal would not result in a cramped form of development. However, I find that the appeal site before me is too cramped for the proposed development.
15. The Cleveland Avenue proposal was for a single storey dwelling rather than the 2-storey dwelling which is before me. Because the development proposal at Cleveland Avenue is materially different, I find that the Council's decision in that matter has no relevance to my determination of this appeal.

### **Conclusion**

16. I dismiss this appeal.

*William Walton*

INSPECTOR