The Planning Inspectorate

Appeal Decision

Hearing held on 17 May 2011
Site visit made on 17 May 2011

by John Chase MCD DipArch RIBA MRTPI

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

Decision date: 9 June 2011

Appeal Ref: APP/X1735/A/11/2144352
Former St John Ambulance Headquarters, Convent Lane, Emsworth, Hampshire, PO10 7JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by conditions of a planning permission.
- The appeal is made by Powell Homes Ltd against the decision of Havant Borough Council.
- The application Ref APP/10/00669, dated 23 September 2010, sought approval of details pursuant to conditions Nos 2 and 3 of an outline planning permission Ref 08/58345/004, granted on 22 October 2008.
- The application was refused by notice dated 16 December 2010.
- The development proposed is the demolition of the existing hall and garage and construction of 1 No single dwelling on existing site.
- The details for which approval is sought are: scale, appearance, layout, means of access, and landscaping.

Decision

1. I allow the appeal, and approve the reserved matters, namely scale, appearance, layout, and means of access submitted in pursuance of conditions Nos 2 and 3 attached to planning permission Ref 08/58345/004 dated 22 October 2008 subject to the following conditions:

   1) The garage for two vehicles shown on the approved plans shall be completed prior to occupation of the dwelling. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order) it shall not be converted to living accommodation, but shall thereafter be kept available for the parking of vehicles.

   2) Notwithstanding details shown on the approved plans, no development shall take place until details of manoeuvring areas to enable vehicles to leave the site in forward gear have been submitted to and approved in writing by the local planning authority. The manoeuvring areas shall be completed in accordance with the approved details before occupation of the dwelling, and thereafter retained for this purpose.

   3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order) no extension or addition shall be constructed to the rear of the house.

   4) Before the first occupation of the dwelling the rooflight shown to serve bedroom 1 shall be fitted with obscured glass and fixed shut, and shall be permanently retained in that condition.

5) The development hereby permitted shall be carried out in accordance with plans numbered OTH/5/10 04A, 05B, 06B, 07A, 09A, Sheet 2A. Sheet 3A, and Sheet 8, except as modified by these conditions.

Procedural Matters

2. At the Hearing an application for costs was made by Powell Homes Ltd against Havant Borough Council. This application is the subject of a separate Decision.

3. Since submission of the appeal, reserved matters approval (Ref APP/11/00080) has been issued, and the extent to which this forms a realistic fall-back position has been taken into account in assessing the appeal proposal.

4. Whilst the planning application form indicates that approval of landscaping reserved matters is sought, it was confirmed by the main parties at the Hearing that insufficient detail had been provided to enable this aspect to be decided. The appellants' suggestion of a condition to require the submission of details is noted, but there are already such conditions on the outline permission.

5. Since the planning application was determined, the Council's Core Strategy has been adopted and Policy CS16 replaces Local Plan policy D1. It was agreed at the Hearing that the relevant aspects of the new policy have the same effect as the Local Plan policy.

6. The Council have questioned whether the reserved matters application falls within the scope of the outline approval, drawing attention to the increase in size over the design submitted at that time. However, the wording of the Design and Access statement accompanying the outline application indicated that it was made solely for the purpose of establishing the principle of development, thereby indicating that the scheme design was intended to be illustrative. The evidence falls short of proving that this scheme amounted to the parameters of scale referred to in Circular 01/2006, such as to create an upper limit to the size of the building. Condition 4 of the outline permission required the building to be predominantly single storey. However, this is open to interpretation, and it is noted that the approved reserved matters scheme does not have a significantly smaller proportion of accommodation at first floor level than the appeal design. The upper floor accommodation is wholly within the roof space, in compliance with condition 4, even though part of it has a gable end. Overall, the proposal is not clearly outside the scope of the outline approval, and it is necessary to assess the design on its merits.

Main Issues

7. The main issues are the effect of the development on 1) the living conditions of the residents of houses in Highland Road, and 2) the character and appearance of the area.

Reasons

Living Conditions

8. The site is in the centre of a residential block, obtaining access via a narrow lane or footpath. On its western side are the rear gardens of a row of terraced houses in Highland Road, and the flank wall of the new building would be adjacent to the rear boundary of these gardens, separated from them by a servicing path.

9. The juxtaposition of the two storey portion of the new house with the rear sitting areas and ground floor windows of the neighbouring properties gives rise to the concern about an undue loss of outlook. The worst case in this respect would be the house at No 28 Highland Road, which has a ground floor extension, the back wall of which would be below the 11m distance to the new house, suggested by the appellants as a commonly adopted standard. The new flank wall, which would rise to approximately 5.2m, would occupy a significant portion of the rear boundary of this property, and would diminish outlook both to the ground floor windows, and the garden sitting areas. However, the reserved matters approval shows a building of similar proportions in this location. Whilst the appeal house would be slightly closer to the boundary than the approved scheme, the additional effect would not be so pronounced as to be significantly more harmful.

10. Unlike the approved reserved matters design, and that indicated on the illustrative plan accompanying the outline approval, the appeal scheme would have a two storey portion projecting at the front of the house. Whilst this would enlarge the profile of the building when viewed from the Highland Road houses, it would be set away from their rear boundary, with the roof sloping down to ground floor eaves level. Taking account of this massing, and the distances from the rear of the existing houses, it is considered that adequate outlook would be maintained.

11. Concerns have been raised about other aspects of residential amenity, including the possibility of overlooking and loss of light. Whilst the first floor windows of the appeal house would be close to, and at right angles to the gardens of the Highland Road houses, any view of the more private parts of these gardens would be at an angle, and partially screened by intervening fences. With respect to sunlight and daylight, the evidence does not indicate that any loss would be so pronounced as to render the scheme unacceptable. Amongst other evidence, the appellants indicate that the building would not contravene Building Research Establishment guidelines, which has not been challenged by the Council.

12. Taking account of these matters, and the potential fall-back position offered by the approved reserved matters scheme, it is considered that any additional loss of amenity would not be so pronounced as amount to an unacceptable effect on the living conditions of the residents of houses in Highland Road. In this respect, the scheme would comply with Policy CS16, which includes the objective to protect residential amenity.

Character and Appearance

13. Whilst the area is mainly composed of two storey houses of varied type, in the immediate vicinity of the site the buildings are either single storey, or with an upper floor within the roof space. To this extent, a chalet style house is in keeping with that prevailing character. The Council have drawn attention to the effect of the gable projection at the front of the house, but the views of it from Havant Road would be diminished by the narrowness of the lane, and vegetation adjoining it, and it would not be an unusual feature on a dwelling of this type. It would create a 'pinch point' in combination with No 4 Convent Lane, but this would only become apparent relatively close to the site, and the additional site coverage over the approved scheme would not be so great as to have a significantly different effect, or be especially out of keeping with this part of the area, which already has a close knit character.

14. The proposal to inset the windows of the dormers nearest to the western boundary, in order to diminish overlooking, is likely to detract in some degree from the appearance of the building, being a contrived solution which would look out of keeping both with the other windows on the house, and with its overall character. However, this feature is common to the approved reserved matters scheme and, at least in the case of the appeal proposal, the inset window at the front would not be viewed alongside a normal dormer.

15. To the extent that the development would vary the design principles established by the approved reserved matters scheme, it is considered that it would not have an unduly harmful effect on the character and appearance of the area, in compliance with the relevant parts of Policy CS16.

Conditions

16. The conditions put forward by the Council have been considered in relation to Circular 11/95. It is necessary to ensure that the garage is retained for the parking of cars in order to avoid congestion of manoeuvring areas or parking outside the site, and to require the submission of additional details of turning areas to avoid vehicles backing towards the main road, both for the benefit of highway safety. A requirement for a minimum of three parking spaces would not be consistent with condition 11 of the outline approval. Whilst a more general restriction of permitted development rights would not be justified, the small size of the back garden requires the restriction of extensions in this area. It is not accepted that the necessity for a condition to restrict permitted development rights for roof alterations has been adequately justified in respect of its effect on the bulk of the building, and the standard restrictions on such rights would avoid the need for specific measures to prevent overlooking from any future windows on the side elevations.

17. In addition, a condition is necessary to avoid overlooking from the rooflight, which would face the rear of the houses in Highland Road. However, it is not accepted that there is a compelling case to require the retention of the recessed glazing in the dormer windows adjacent to the western boundary as these would have an angle of view of the adjoining houses, and the sides of the dormers would help to restrict lateral vision in normal use. The approved plans are listed for the avoidance of doubt and in the interests of proper planning.

John Chase

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

S Jupp BA, LLM, MRTPI	Planning Consultant
G Powell	Powell Homes Ltd
J Powell	Powell Homes Ltd

FOR THE LOCAL PLANNING AUTHORITY:

J Trask BSc, MSc, MRTPI	Planning Department, Havant Borough Council
P Tanner BSc	Planning Department, Havant Borough Council

INTERESTED PERSONS:

V Morran	Local resident
L Patrick	Local resident
G Senior	Local resident
P Woolgar	Local resident
R Woolgar	Local resident
J Slotema	Local resident

DOCUMENTS

1 Drawing 'Sheet 8' showing cycle and bin store details
2 Drawing OTH/5/10 10 showing the appeal scheme in relation to the approved reserved matters scheme
3 Planning permission APP/11/00080 and approved drawings
4 Appellants' costs application

The Planning Inspectorate

Costs Decision

Hearing held on 17 May 2011
Site visit made on 17 May 2011

by John Chase MCD DipArch RIBA MRTPI

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

Decision date: 9 June 2011

Costs application in relation to Appeal Ref: APP/X1735/A/11/2144352 Former St John Ambulance Headquarters, Convent Lane, Emsworth, Hampshire, PO10 7JJ

- 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 Powell Homes Ltd for a full award of costs against Havant Borough Council.
- The hearing was in connection with an appeal against the refusal of approval of details pursuant to conditions Nos 2 and 3 of an outline planning permission Ref 08/58345/004.

Decision

1. The application for an award of costs is allowed in part, in the terms set out below.

The submissions for the appellants

2. The appellants made a written submission.

The response by the Council

3. The Council made a verbal response, acknowledging that the illustrative plans accompanying the outline application showed rooms in the roof, but the appeal scheme was substantially larger, especially with respect to the garage projection. Where the illustrative scheme had been satisfactory with respect to the amenity of neighbours, the differences made the new scheme unacceptable, and evidence had been submitted in support of this contention. There were significant differences between the appeal scheme and the existing house at No 4 Convent Lane.

Reasons

4. Circular 03/09 (the 'Circular) 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 expense in the appeal process.

5. The Council's case referred to an expectation that the reserved matters scheme would reflect the proposals which had been submitted at the outline stage. However, as indicated in the appeal decision, there is no clear indication that the outline approval effectively controlled the scale of the development, nor that the proposal was at variance with Condition 4 of that permission. It was therefore necessary for the application to be considered on its merits.

6. With respect to the first reason for refusal, the Council's evidence referred to the effect of the two storey flank wall on the adjoining houses, but in general terms, and without explanation as to how the proposal was substantially different from the subsequently approved reserved matters design. Reference was made during the Hearing to the effect of the projecting front portion of the building, which had not been specifically raised in the statement, but, again, without adequate support for the contention of harm, or reference to any accepted standards, guidance or normal practice. For these reasons, it is considered that the Council failed to produce the evidence necessary to show why the development could not be permitted, contrary to the advice in para. B16 of the Circular.

7. In relation to the second reason for refusal, there was more specific information about the particular concerns arising out of the bulk of the building in relation to its surroundings, including the effect of the projecting front portion, which did not form part of the permitted reserved matters scheme. On balance, it is considered that this amounted to sufficiently realistic and detailed evidence so as to comply with the terms of the Circular, including para. B18 concerning the support for matters of judgement on character and appearance.

8. It is therefore concluded that the Council demonstrated unreasonable behaviour leading to unnecessary expense in respect of the first reason for refusal of the reserved matters approval, but not in respect of the second reason. An award of the full costs of the appeal is not justified, but a partial award is made.

Costs Order

9. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Havant Borough Council shall pay to Powell Homes Ltd, the costs of the appeal proceedings limited to those costs incurred in dealing with the first reason for refusal on the Council's decision notice dated 16 December 2010, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

10. The applicant is now invited to submit to Havant Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

John Chase

INSPECTOR