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# Appeal Decision

Site visit made on 24 July 2017

**by Andrew McGlone BSc MCD MRTPI**

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

**Decision date: 28 July 2017**

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**Appeal Ref: APP/M2325/W/17/3173299**

**The Homestead, Ribby Road, Kirkham, Lancashire PR4 2BE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Justin Coyne against the decision of Fylde Borough Council.
  - The application Ref 16/0050, dated 24 January 2016, was refused by notice dated 12 October 2016.
  - The development proposed is a 4 Bedroom 2 storey Detached house.
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## Decision

1. The appeal is allowed and planning permission is granted for a 4 Bedroom 2 storey Detached house at The Homestead, Ribby Road, Kirkham, Lancashire PR4 2BE in accordance with the terms of the application, Ref 16/0050, dated 24 January 2016, subject to the conditions in the attached schedule.

## Application for costs

2. An application for costs was made by Mr Justin Coyne against Fylde Borough Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. The application was submitted in outline with all matters reserved for future consideration except for access, layout and scale. Indicative plans have been submitted which have formed part of my consideration of this appeal.
4. Aside to these, illustrative plan Ref: HP/2177G PL/16/05.4 was lodged with the appeal with a view to addressing the Council's highway safety concerns. The appeal process should not be used to evolve a scheme and normally a fresh planning application should be made<sup>1</sup>. However, despite the public interest in this scheme, the nature of the changes relate to landscaping, which is a reserved matter. Also, as my reasoning sets out be addressed by way of a planning condition. I have considered the appeal on this basis.
5. The Council's second reason for refusing planning permission relates to the lack of a bat survey. Bats are a protected species<sup>2</sup>. A survey was lodged with the appeal which confirmed the site has a low potential for supporting bats. I note the Council accept the findings of this survey and no longer wishes to contest the proposal's effect on protected species. While residents' have concerns with the adequacy and impartiality of the survey, there is no substantive evidence before me to the contrary. Thus, the proposal accords with saved Policy EP19 of the Fylde Borough Local Plan As Altered (FBLP), section 2 of Policy ENV2 of

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<sup>1</sup> The Planning Inspectorate, Procedural Guide, Annexe M, Paragraphs M.1 and M.2, 5 August 2016

<sup>2</sup> Wildlife and Countryside Act 1981 (as amended).

the emerging Fylde Council Local Plan to 2032 (FCLP) and paragraph 118 of the National Planning Policy Framework (the Framework).

6. The Council accept that they are currently unable to demonstrate a five-year supply of deliverable housing sites as required by paragraph 47 of the Framework. While the shortfall is not significant at 4.8 years, in these circumstances paragraph 49 states that relevant policies for the supply of housing should not be considered up-to-date. Although saved FBLP Policy HL2 is concerned with housing, having regard to paragraph 215 of the Framework I afford it substantial weight, given its general conformity with the Framework. The emerging FCLP is at an advanced stage. However it is still being examined in public and I am unaware of the extent of any unresolved objections. Even so, I afford it moderate weight given the general consistency of emerging Policies GD7 and H2 with the Framework.

### **Main Issues**

7. The main issues are the effect of the proposal on: (i) the character and appearance of the area; (ii) highway safety, with regards to the proposed access arrangement on the safety of pedestrian traffic using Cherry Road to and from Kirkham Grammar School; and (iii) the living conditions of 8 to 10 Cherry Close, with regards to privacy, outlook and natural daylight.

### **Reasons**

#### *Character and appearance*

8. The appeal site forms part of the rear garden to The Homestead which is a semi-detached dwelling that fronts Ribby Road. To the east of The Homestead is a row of five dwellings. Each of the dwellings in this row are set back from the road and have long linear rear gardens which back onto the grounds of Kirkham Grammar School. To the north and west of the site is a modern housing development containing detached dwellings in less spacious plots.
9. Paragraph 53 of the Framework explains that "*Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.*" I note emerging FCLP Policy H2 sets out the Council's approach to residential development on garden land. While, FCLP Policy H2 outlines the scope of the stringent caveats, this policy nor paragraph 53 of the Framework provide detailed guidance on when a proposal may or may not be acceptable. Even so, broadly in tune with paragraphs 58 and 64 of the Framework, saved FBLP Policy HL2 and emerging FCLP Policies H2 and GD7 seek development to reflect the character of the locality in terms of scale, space around buildings, materials and design.
10. The proposed dwelling would sub-divide the existing plot and therefore disrupt the long linear plot of The Homestead. While the group of six dwellings are only a small part of Ribby Road, they are separated from other housing development on Ribby Road by its junction with Blackpool Road and Kirkham Grammar School. The form of development evident in the six dwellings is a characteristic that positively contributes to the spacious verdant setting of the site. This is tempered somewhat by the adjoining modern detached dwellings and the proposed access closely mirroring that of 7 Cherry Close. Even so, the proposal would harm the character of the area given the six dwellings are set within more spacious verdant grounds compared to properties on Cherry Close.

11. The appeal site is not, however, very visible from Ribby Road, Cherry Close or the access to the school, mainly due to the established landscaping on and off the site. The appearance of the proposed dwelling is also a matter that has been reserved for future consideration. Thus, there is no reason to believe that a dwelling could not be designed to reflect either the surrounding area, while not imposing architectural styles or particular tastes. While I share concerns about a precedent being set by sub-dividing plots on Ribby Road, I am not persuaded that the proposed development could be replicated in adjoining properties due to accessibility constraints. In any event, this does not alter my concerns in respect of the proposal's effect on the character of the area which I have considered on its own planning merits following a site visit.
12. For these reasons, I conclude on this issue that the proposal would adversely affect the character of the area. The proposal would therefore be contrary to saved FBLP Policy HL2, emerging FCLP Policies H2 and GD7 and paragraphs 53, 58 and 64; which together seek development to be in keeping with the character of the locality through a high standard of design.

### *Highway Safety*

13. Access to and from the appeal site would be gained from Cherry Close next to the flank boundary of 8 Cherry Close. The land which would be used to access the site is marginally higher than the access into Kirkham Grammar School. The school access is, I gather, well used as a pedestrian route by pupils. It is an attractive route to and from the school, which may become more popular with the construction of new dwellings and through a signalised crossing.
14. Extra vehicular movements would arise from the proposed family sized dwelling, compared to the current situation. Even so, I agree with the Council that there would not be any issues with the capacity or ability for vehicles to park and manoeuvre on the site itself.
15. Cherry Close is a cul-de-sac which does not benefit from a pedestrian footway, even though it is an adopted highway. Thus, pedestrians and vehicles must share the same surface. In addition to the school access there is a pedestrian footway which links the close to Ribby Road in front of 8 to 10 Cherry Close. Vehicles entering and leaving the appeal site would also use the shared surface on the close. Due to the width of the close and the access, vehicle speeds would not be high. Nevertheless, despite this, there is good visibility of the proposed access, especially at the point where it would join Cherry Close, from the school gates, the close and the pedestrian link from Ribby Road. Still, I grasp the concerns raised about the potential for conflict to occur between vehicles and pedestrians. However, there is no substantive evidence that the existing arrangement has led to highway safety conflicts, even if vehicles park on the close and a pedestrian footway would offer segregation.
16. Added to this, there is an existing vehicular access serving No 7 which joins the close next to the school access. Landscaping does ensure vehicles are, once on the driveway of No 7, not next to pedestrians. But pedestrians accessing or egressing the school would still be used to vehicle movements nearby. Hence, pedestrians would not be surprised by vehicles entering or leaving the appeal site near to the school access.
17. The Council have regrettably been unable to seek the views of Lancashire County Council (LCC) with regards to the illustrative plan lodged by the appellant with their appeal, but I note the consultation response of LCC provided during the planning application. Crucially, this sets out their view that

the principle of the proposed access wasn't a major concern. They did raise concerns with the potential for vehicles and pedestrians to come into contact with one another, but deemed that this could be resolved by a low fence or landscaping. The latter is used at No 7. No amended plan was lodged before the Council refused planning permission. However the illustrative plan before me shows how a low boundary fence could provide a physical barrier between the proposed access and the school access. While such details should normally be part of the development for which the application is made and planning conditions cannot be used to reserve these details for subsequent approval, the Planning Practice Guidance<sup>3</sup> is clear that the exception is where the applicant has made it clear that the details have been submitted for illustration purposes only. Fences form part of the consideration of 'landscaping'<sup>4</sup> and I consider the Council's suggested planning condition to secure further details would satisfy LCC's concerns.

18. Subject to the imposition of suitable planning conditions, I do not consider the proposed access arrangements would result in an access which is not safe and suitable. I conclude on this issue that the proposal would accord with saved FBLP Policy HL2 (criterion 9), emerging FCLP Policy GD7 (criteria o) and p)) and paragraph 32 of the Framework. These policies jointly seek development to, among other things, ensure they would not have an adverse effect on the safe and efficient operation of the highway network, either individually or cumulatively and prioritise the needs of non-motorised users of the highway so that their safety is not prejudiced.

#### *Living conditions*

19. The detached dwellings of Nos 8 to 10 back onto the appeal site, albeit on an angle. Each property is staggered which means that their gardens have different depths. Habitable room windows are in the rear elevations of Nos 8 to 10 at ground and first floor. The rear elevations are orientated in a north-easterly direction and face a mature belt of landscaping on and off the site.
20. Representations were made to the effect that Mrs Eastham and her family's rights under Article 1 of the First Protocol to the European Convention, as incorporated by the Human Rights Act 1998 would be violated if the appeal were to be allowed. Article 1 concerns enjoyment and deprivation of possessions. Similarly Mrs Eastham considers her and her family's rights under Article 8 would be violated. This article states that everyone has a right to respect for his home and private life, his home and correspondence. These are qualified rights, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
21. Due to the landscaping on the shared boundary, when it is in leaf, there are very limited views of the appeal site from Nos 8 to 10. Nonetheless, revisions to the dwelling's scale would, as the Council recognise, improve its relationship with these dwellings. Even so, the proposed dormer bungalow would occupy most of the plot width associated with No 9, even if a residential use is compatible. The proposal would also not result in the use of the front garden of The Homestead, with each property benefitting from a rear garden.
22. Although the Council's Extending Your Home Supplementary Planning Document (SPD) applies to existing dwellings and not new dwellings, it does offer a useful toolkit in defining the Council's approach to habitable room windows and how

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<sup>3</sup> Planning Practice Guidance, Paragraph: 005 Reference ID: 21a-005-20140306

<sup>4</sup> The Town and Country Planning (Development Management Procedure) (England) Order 2015, Part 1, Section 2(1)

- development should relate to them to ensure the privacy and outlook of neighbouring occupants. Habitable room windows are defined as bedrooms, kitchens, living rooms and principal dining rooms in the SPD, while rooms such as bathrooms, utility rooms, porches, garages, hall/stairs or landings and conservatories are not habitable rooms.
23. While the scale of the proposed dwelling does rise to the centre and it would be positioned close to both flank boundaries of the site, the roof plane would angle away from the rear gardens of Nos 8 to 10 where it would be markedly lower. There is also enough space between the proposed dwellings, the shared boundary and to Nos 8 to 10, so that much of the existing landscaping on and off the site is retained. This would ensure there are no unrestricted views into neighbouring gardens or the rear elevations of Nos 8 to 10 and soften the gable elevation, while the roof lights shown in either flank roof plane would not serve habitable rooms. There would also be substantial interface distances to The Homestead and its reduced rear garden. Openings in the proposed dwelling would be relatively close to the shared boundary with Nos 8 to 10. However, views from these windows towards Nos 8 to 10 would be at an oblique angle. As such, I do not consider the proposal would be overbearing. The living conditions of the occupants in Nos 8 to 10 would not therefore be adversely affected, in terms of privacy and outlook.
24. The dormer bungalow would be behind mature landscaping to the north-east of Nos 9 and 10 and to the east of No 8. Given the scale of the proposed dwelling and the landscaping, some of which lies in the rear gardens of Nos 8 to 10, I am not persuaded harm would be caused to the living conditions of Nos 8 to 10, in terms of natural daylight, accounting for its bulk, mass and layout.
25. Given the above, I do not consider arguments concerning violations to the Human Rights of Mrs Eastham and her family to be well-founded, because I have found that the proposed development would not cause unacceptable harm to the living conditions of Mrs of Mrs Eastham and her family and of other occupants who adjoin the appeal site. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 1 of the First Protocol and Article 8 to the European Convention, as incorporated by the Human Rights Act 1998.
26. I conclude, on this issue, that the proposal would accord with FBLP Policy HL2 (criterion 4), emerging FCLP Policies H2 and GD7 (criteria b), c) and g)), the SPD and paragraph 17 of the Framework. These jointly seek development to, among other matters, relate well to the surrounding context so that it would not adversely affect the amenity and privacy of neighbouring properties.

### *Planning Balance*

27. Given the Council's housing supply position, bullet point four of paragraph 14 of the Framework applies. In such cases, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.
28. In economic and social terms, I attach a limited positive weight to the proposal's contribution to the economy through construction jobs. I also attach a limited positive weight to the provision of a single extra dwelling in Kirkham in a sustainable location, given the extent of the shortfall below the five-year supply of deliverable housing sites. Future occupants would also spend money



and support the facilities and services on offer locally, albeit there would be a limited contribution given the single net gain.

29. I attach a moderate negative weight to the proposal's harm to the character of the area. There would also be a neutral effect on the natural environment, in terms of bats. As facilities and services are accessible by various modes of transport, the proposal would reduce reliance on the private car and assist with moving to a low carbon economy. This attracts a very limited positive weight.

#### *Other matter*

30. I understand the land which is proposed to be used to access the appeal site was purchased by the appellant with a view to providing access to the existing rear garden of The Homestead. While points are made about conditions of the sale, I do not have copies of the documents referred to and in any event, this decision does not overturn documentation relating to the sale of land.

#### *Conditions*

31. I have had regard to the conditions which have been suggested by the Council. I have imposed a condition regarding the approved plans in the interests of certainty. Details of landscaping is a reserved matter, so I have imposed conditions for an arboricultural assessment and details of boundary treatment to form part of any reserved matters application, in the interests of character and appearance, the living conditions of neighbouring residents and highway safety.
32. I have imposed conditions to secure foul and surface water drainage schemes in the interests of flooding and to manage the effects of pollution. Given the site's size and its relationship with adjoining dwellings, in the interests of character and appearance, I have imposed a permitted development restriction, except for porches and other alterations to the roof of a dwellinghouse which would not meet the tests of reasonableness and necessity<sup>5</sup>. I have not imposed conditions in respect of site levels given the existing ground levels. Conditions are not necessary for a walkover survey, given the findings of the bat survey or to control the scale of the dwelling as it forms part of the development applied for.

#### **Conclusion**

33. I have found harm in relation to character. However there would not be any adverse impacts, subject to planning conditions, in terms of highway safety and living conditions. While the proposal creates a tension between the roles of sustainable development, I do not consider the harm that I have found in respect of character in the social and environmental roles leads me to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits which would arise from the proposal, when assessed against the policies in the Framework taken as a whole. The proposal therefore represents a sustainable form of development.
34. For the reasons set out above, I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR

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<sup>5</sup> Planning Practice Guidance, Paragraph: 017 Reference ID: 21a-017-20140306

## SCHEDULE OF CONDITIONS

1. Details of the appearance and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall be for the construction of no more than 1 residential unit and relates to the following plans and documents: Location Plan – DRWG No: LP01; Site Plan – DRWG No: SP01; Plan of Site Access – DRWG No: 01; Plan of Site Access – DRWG No: 02 and the Bat Survey and Report Ref: 13174/FO.
4. Notwithstanding the provisions Article 3, Schedule 2, Part 1 (Classes A, B, E and F) and Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further development of the dwelling or curtilage relevant to those classes shall be carried out without planning permission.
5. Prior to the commencement of development a scheme for the disposal of foul for the entire site shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, surface water must drain separate from the foul and no surface water will be permitted to discharge directly or indirectly into existing foul, combined or surface water sewerage systems. The development shall be implemented, maintained and managed in accordance with the approved details.
6. Prior to the commencement of any development, a surface water drainage scheme, based on the hierarchy of drainage options in the Planning Practice Guidance with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the Local Planning Authority.

The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the Local Planning Authority, no surface water shall discharge to the public sewerage system either directly or indirectly.

The development shall be completed in accordance with the approved details.

7. Prior to the commencement of development details of all fencing, gates (including access gates) or other means of enclosure shall be submitted to and approved in writing by the Local Planning Authority, with any gate adjacent the public highway designed to only open away from the highway. Any gateposts erected at the access shall be positioned 5m behind the nearside edge of the carriageway. The development shall be implemented in accordance with the approved details.

8. Notwithstanding the requirements of condition 3 of this permission, no development shall take place until a scheme for the design and construction of the site access, hereby approved has been submitted to and approved in writing by the Local Planning Authority. The access shall be constructed in line with the duly approved scheme before any of the dwelling is first occupied.
9. That an arboricultural assessment for the site, to BS5837:2012 standard which, demonstrates that the development can be constructed without harming the trees within and adjacent the application site, shall be submitted as part of any reserved matters application.