

PLANNING COMMITTEE – 6 NOVEMBER 2018

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| Application No: | 18/01711/FUL |
| Proposal: | Variation of condition 2 attached to the appeal decision APP/B3030/W/17/317963 for planning permission 17/00623/FUL to amend the proposed floor plans and elevations |
| Location: | Land At Rear Of Franklyn, Lower Kirklington Road, Southwell |
| Applicant: | ISP Developments |
| Registered: | 11.09.2018 |
| Target Date: 06.11.2018 | |

This application is being presented to the Planning Committee in line with the Council's Scheme of Delegation as Southwell Town Council has objected to the application which differs to the professional officer recommendation.

The Site

The application site relates to a residential plot which previously formed the western section of garden area associated with Appleyard, a two storey red brick dwelling. The site is situated on the north western edge of the settlement of Southwell and within the urban boundary for the settlement. The site is accessed from a private road which currently provides access to a number of residential dwellings.

The wider land to the south and west is allocated for residential development of approximately 45 dwellings under policy So/Ho/4. The development is situated within Flood Zone 1 in accordance with Environment Agency mapping and is not designated as being prone to flooding from surface water.

Site History

18/01506/NMA - Application for non-material amendment to planning permission 17/00623/FUL to vary the approved plans.

The NMA application referred to the changes sought by the current variation of condition application. The decision issued 29th August 2018 was split. The reason for this decision is that Officers considered it would be appropriate for existing neighbouring properties to be consulted on the proposed change given that the amendment sought proposes a first floor side window in close proximity to the boundary of neighbouring land uses.

17/00623/FUL - Proposed New Dwelling.

This application was presented to Members with an Officer recommendation of approval in June 2017. However Members were minded to overturn the recommendation and refused the application by decision dated 12th June 2017 for the following single reason:

“In the opinion of the Local Planning Authority the proposed piecemeal and uncoordinated development of what is clearly a three bedroom dwelling would result in an overly intensive and cramped development owing to the narrow width of the plot and lack of spacing between dwellings. The overly cramped appearance of the development would be out of character with the existing generous plot spacing within the immediate vicinity of the site to the detriment of the character and grain of the surrounding area and furthermore is a development that fails to meet the specific identified housing need of two bedrooms or less for Southwell which is embedded in the Development Plan. The proposal is therefore contrary to Core Policies 3 and 9 of the adopted Newark and Sherwood Core Strategy (2011) as well as Policy DM5 (Design), Policy So/HN/1 (Southwell Housing Need) of the adopted Allocations and Development Management DPD (2013) which together form the Development Plan as well as the NPPF which forms a material consideration. There are no other material planning considerations that would in the opinion of the Council outweigh such harm.”

The applicant subsequently appealed the decision and the Inspector allowed the proposal by decision dated 24th October 2017.

17/00389/FUL – Erection of single storey 2 bed barn style dwelling. Approved May 2017.

17/00221/FUL - Variation of condition 2 attached to 16/01388/FUL to allow amendments to plot 2. Approved February 2017.

16/02041/FUL - Change of use from commercial to residential C3 Use. Retaining existing structure with extension to the east side to create bedroom and bathroom area, and smaller extensions to the north and south to create an open plan kitchen/diner with utility room. Approved January 2017.

16/01388/FUL - Phased development of four detached dwellings and alterations to existing access and driveway. Approved November 2016.

15/02179/FUL - Erection of four detached dwellings and alterations to existing access and driveway on the same application site. Approved July 2016.

The Proposal

The current application relates to a Section 73 application to vary condition 2 of the Planning Inspector's Decision. For the avoidance of doubt, condition 2 states the following:

2) The development hereby permitted shall be carried out in accordance with the following approved plan: 514-01 Rev C.

The supporting documentation for the current application confirms that the development as built is not in accordance with the above plan and therefore seeks to rectify this to allow for the sale of the property. The differences in respect to the plan now proposed for agreement and the approved plan are outlined by the agent's covering Letter dated 10th September 2018 as being:

These amendments were limited to the aforementioned internal configurations, the insertion of a small, secondary first-floor window on the western gable, and an alternative fenestration detail on the rear elevation serving the utility and open plan dining area.

The house, footprint, eaves and ridgeline (and number of bedrooms) otherwise remained exactly as originally approved.

In addition to the aforementioned supporting letter, the current application has been accompanied by the original plan reference referred to by the extant condition and an updated plan reference 514-01 Rev. E.

To be clear, the internal re-configurations include additional floor space at first floor to create three bedrooms at the first floor. The downstairs bedroom which was shown on the approved plans has now been annotated as a study.

Departure/Public Advertisement Procedure

Occupiers of six properties have been individually notified by letter.

Planning Policy Framework

The Development Plan

Southwell Neighbourhood Plan (Adopted October 2016)

Policy SD1: Delivering Sustainable Development

Policy DH1: Sense of Place

Policy E1: Flood Risk Assessments and Mitigation

Policy E2: Flood Resilient Design

Policy TA3: Highways Impact

Newark and Sherwood Core Strategy Adopted March 2011

Spatial Policy 1: Settlement hierarchy

Spatial Policy 2: Spatial distribution of growth

Spatial Policy 6: Infrastructure for Growth

Spatial Policy 7: Sustainable transport

Core Policy 1: Affordable Housing Provision

Core Policy 3: Housing Mix, Type and Density

Core Policy 9: Sustainable design

Core Policy 10: Climate Change

Core Policy 12: Biodiversity and Green Infrastructure

Allocations and Development Management DPD Adopted July 2013

DM5: Design

DM12: Presumption in favour of sustainable development

So/HN/1: Southwell Housing Need

Other Material Planning Considerations

National Planning Policy Framework 2018

Planning Practice Guidance 2014

Consultations

Southwell Town Council - Southwell Town Council considered application 18/01711/FUL Land At Rear Of Franklyn and agreed unanimously to object to this application and to ask Cllr Bruce Laughton to the call in to NSDC for the following reasons:

The original plans were objected to and only passed at appeal with the condition that the house was built in accordance with approved plan: 514-01 Rev C, the house has an additional extra upstairs bedroom and ancillary rooms making it a four bedroomed house.

Southwell Civic Society – ‘When we submitted our comments on 3 October we were completely unaware that the property had already been constructed to Drawing No 514-01 Rev E. The application did not state that it was in fact a retrospective application.

The amended application is for a four/five bedroomed house, which is contrary to Paragraph 6 in the Inspectors report, which states:-

“It is also pertinent that the proposed unit would be a modest 3-bedroom property with limited floorspace above the ground floor level. Accordingly, there would be no material conflict with CS Policy So/HN/1”.

We also note that Condition 5 in the Appeal Decision has also been breached and this states:-

“No additional windows shall be added into any elevation of the dwelling hereby approved unless consent has first been granted in the form of a separate planning permission.”

In the side elevation with the gable end an additional window has been added, and on the rear elevation an additional window has been added next to the door and the other window has been increased in size.

We feel that to totally disregard the planning process is a serious matter. The applicant obviously had several months to make this application before any work commenced. The applicant was not new to the planning system.

The decision to uphold the Appeal by The Secretary of State for Communities and Local Government’s was on the basis that The Planning Inspector’s recommendations and Conditions would be complied with. Conditions 2 and 5 have clearly been breached. It is important that the house is built in accordance with Drawing No 514-01 Revision C. Not to do so makes a mockery of the whole planning process.

Neighbours / Interested Parties - No written representation have been received.

Comments of the Business Manager

Principle of Development

An application under Section 73 (variation of condition) is in effect a fresh planning application but should be determined in full acknowledgement that an existing permission exists on the site. This Section provides a different procedure for such applications for planning permission and requires the decision maker to consider only the question of the conditions subject to which planning permission was granted. As such, the principle of the additional dwelling cannot be revisited as part of this application.

The NPPG acknowledges that Neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and shape the development and growth of their local area, thus providing a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area.

Following public consultation and independent examination, at its council meeting on 10th October 2017 Newark and Sherwood District Council adopted the Southwell Neighbourhood Plan. The Neighbourhood Plan now forms part of the development plan for the district and its policies are a material consideration alongside other policies in the development plan and carry weight in the determination of planning applications in Southwell. In this instance the most relevant policies in the Neighbourhood Plan are listed above and are considered against the relevant aspects of the proposal in the assessment below.

Impact on Housing Need

The comments of the Town Council are noted in terms of the number of bedrooms which the house would deliver. The application plans to accompany the current application detail that the property would be three bedrooms all at first floor. In the case of the original application approved by the Inspector the dwelling was also approved as being three bedrooms but one of the bedrooms was at ground floor (now annotated as a study). Officers are aware that the house has been advertised on the market as a 4 bedroom dwelling with alternative annotations on the floor plan showing the study as a bedroom (as approved by the Inspector). Officers fully understand the concerns of the Town Council and indeed there is some ambiguity to a degree that a reasonable observer could anticipate the dwelling being used as a four bed property.

Matters of housing mix were addressed through the Officer report presented to Members in the original application confirming the policy preference for one or two bedroom units in Southwell. The application, in seeking a three bed unit, was therefore acknowledged by Officers to be contrary to So/HN/1. This formed part of the reason to the refusal of the application by Members (as detailed in full above).

Subsequently matters of housing need were assessed by the Inspector:

7. CS Policy So/HN/1 seeks to secure the majority of new housing as 1 or 2 bedroom units. However this is qualified by a requirement to consider local site circumstances. In this case, the provision of a smaller unit is likely to jar with the established character of the locality which comprises large dwellings occupying generous plots. It is also pertinent that the proposed unit would be a modest 3-bedroom property with limited floorspace above the ground floor level. Accordingly, there would be no material conflict with CS Policy So/HN/1.

Clearly the internal re-configuration which is being sought for approval through the current application would change this position insofar as the first floor space would no longer be considered as limited. Officers consider that this amounts to a material change when comparing the extant approval with the proposal which falls to be assessed through the current application. However, there is an argument to say that the current application would not require planning permission in any case (although the LPA advised that the non-material amendment application referred to in the site history above did require an application, this decision was made in the absence of the additional window being presented as obscurely glazed which it is now).

The difficulty in the current assessment is identifying what, if any, harm amounts from the revisions presented. If the application is considered on its own merits in good faith then it aligns with the number of bedrooms which was assessed and approved by the Inspector. However, in the context of the housing particulars which have been viewed by Officers, there is clearly some doubt to the number of bedrooms to a degree where the property as built would allow for occupation as a four bed dwelling. It is worthy of note that there is nothing procedurally to prevent this being dealt with through the current section 73 application given that the original permission did not refer to the number of bedrooms within the description of development.

In either scenario it remains the case that the proposal is contrary to So/HN/1 and the overall aspirations of the Neighbourhood Plan which seeks to secure smaller units. However, in line with the Inspectors decision above, it has already been accepted on this site that a smaller unit would not necessarily conform with the established character of the locality. Officers are conscious that the dwelling as built (and sought to be regularized through the current application) does not increase the footprint and scale of the original proposal. As Members will be aware, internal reconfigurations do not require planning permission in their own right.

It is also a material planning consideration that the authority has been previously challenged on its application of Policy So/HN/1 through an appeal at Brooklyn on Lower Kirklington Road (APP/B3030/W/17/3179351). The Inspector's decision allowing the appeal was dated 17th January 2018 (thus postdating the appeal decision for this site). In respect to matters of housing need the Inspector makes the following comments:

9. *However, the ADMDPD was adopted in 2013 and the justified reasoning for policy So/HN/1 explains that it is based upon the Housing Needs Assessment which informed the preparation of the Core Strategy. As the Core Strategy was adopted in 2011, the data upon which this policy is based is at least 7 years old.*
10. *The most recent evidence on housing need is the Housing Market Needs Sub Area Report which was published in 2014. It found in Southwell that there was a greater need for houses of 3 or more bedrooms than there was for properties of two bedrooms or less. As a result, the proposed development would provide housing of a size for which the current local evidence is the greatest need exists in Southwell. This is an important material consideration which, in my judgement, given that policy So/HN/1 of the ADMDPD is based upon significantly older evidence, outweighs non-compliance with this policy. Owing to the more recent evidence on housing, I find that the proposal would comply with Core Policy 3 of the Core Strategy.*

Bearing in mind the conclusions the Inspector drew regarding So/HN/1, I have therefore considered the most up to date evidence of the housing need in Southwell which is contained within the Housing Needs Survey Sub Area Report 2014 by DCA. This provides that in the Southwell Sub Area (where this site falls) the most needed type of accommodation are 2 beds (37.9%) followed by 4 beds (33%) followed by 3 beds (16.3%) followed by 1 beds (10.1%) and finally five or more beds (2.7%). It confirms that '*In the market sector the main size of property required by both existing and concealed households moving is two bedrooms.*'

On the face of it therefore, the Inspector's conclusions appear to be incorrect. However, following further interrogation it appears that the Inspector was making reference to a cumulative need, i.e. the cumulative percentage need for 3, 4 and 5 beds is 52% which is greater than the cumulative percentage need for 1 and 2 beds at 48%. This does not change the position that the *greatest* need in the market sector is for 2 bed units. What is key from the 2014 Report however is that there is actually a greater need for four bed properties as oppose to three bed units.

In this context, if the LPA were to resist the current proposal purely on the basis that the dwelling was perceived as a four bed rather than a three bed then there would be significant difficulties in articulating the harm to a degree which would be upheld in an appeal scenario. Moreover the LPA would have to consider how it could reasonably remedy the current breach (noting the dwelling is already built). Given that this would relate to the use of internal floor space, this would be extremely difficult (and arguably unenforceable) to secure.

The concerns of the Town Council are fully appreciated. However, Officers are minded to take a pragmatic approach and attach significant weight to the decision of the Inspector which has already accepted a dwelling which would be contrary to Policy So/HN/1/. The potential for an additional bedroom in the position of the ground floor study (as appears to have been presented through the sales particulars seen by Officers) is not considered to be materially worse than the extant scheme to a degree which would warrant resistance of the current proposal. As discussed above, a four bed dwelling would actually better align with the housing need of the Sub Area than a three bed unit.

Impact on Character

As is identified above, the new dwelling has not been built in accordance with the plan considered by the Inspectorate in approving the development. The changes relate to the internal reconfiguration of the dwelling (which would not require planning permission in any case); the slight reconfiguration of fenestration details in respect to the positioning of windows; and an additional first floor window on the western gable end. The resultant character impacts of these changes would be unperceivable in comparison to the approved extant plan and therefore I have identified no reason to resist the application on the basis of Core Policy 9 or Policy DM5.

Impact on Amenity

As is identified by the site history section above, the applicant has already attempted to agree the changes sought through a non-material amendment application. However, the decision of the LPA was that the additional windows proposed at first floor on the western side gable could not be considered as non-material as it would be appropriate to seek consultation with potentially affected neighbouring parties. Unlike the non-material amendment application, the section 73 plans show that the window would be obscurely glazed at all times. I have nevertheless assessed the potential impact of this additional window in respect to neighbouring amenity.

The window serves a bedroom annotated to be the master bedroom built in the roof space. The neighbouring property has recently been converted from its previous use as a cattery to a residential dwelling. The planning permission for the conversion also allowed for minor extensions which have been built on site. There is a land level difference between the application site and the neighbouring property to the west such that the additional window is broadly set at single storey height when viewed from the neighbouring plot. The window is orientated primarily towards the roof of the neighbouring development such that it would not afford a direct line of sight (notwithstanding that it is obscurely glazed) to the neighbouring property. There may be some oblique line of sight to the side windows on the neighbouring extension (including a secondary bedroom window and garage windows) but owing to the hedged boundary treatments and aforementioned changes in land level, I do not consider that the window would lead to additional overlooking or loss of privacy which would warrant concern. On this basis I have identified no additional detrimental amenity impacts which would lead to a resistance of the proposal when taking account of the extant scheme which exists. In order to secure an appropriate amenity relationship for the lifetime of the development, I consider it would be appropriate to add an additional condition requiring that the window be retained as obscurely glazed.

As is discussed above, the window would be the sole window serving the additional first floor bedroom. In amenity terms for the occupiers, it is not ideal that the bedroom would be served by a single obscurely glazed window. However, the occupiers would be purchasing the dwelling on this basis and would therefore be aware of the amenity provision for this bedroom. I therefore do not consider this to amount to a reason to resist the application in this instance.

CIL

Development is CIL liable in this location. I note that CIL has been applied to the original permission and has been paid. Paragraph 007 of the NPPG states the following:

If the section 73 permission does change the levy liability, the most recently commenced scheme is liable for the levy. In these circumstances, levy payments made in relation to the previous planning permission are offset against the new liability, and a refund is payable if the previous payment was greater than the new liability.

A CIL liability form has been requested during the life of the application to confirm the floor space of the dwelling as built. The original liability paid can be off-set against the CIL payment.

Conclusion

The changes proposed through the Section 73 application are relatively minor in their physical form but nevertheless require careful consideration in respect to housing need; character; and amenity impacts. As identified by the appraisal above, the revisions are not considered to create additional harm above and beyond the extant approval which would warrant resistance.

Given that a Section 73 application forms a new planning permission it is necessary to impose all relevant conditions. The conditions rely on those imposed by the Inspector (with the additional condition in respect to obscure glazing as referred to above), where changes have been made this has been indicated through underlined text.

RECOMMENDATION

That planning permission is approved subject to the conditions shown below:

01

The development hereby permitted shall be carried out in accordance with the following approved plan: 514-01 Rev E.

Reason: To define the permission.

02

The development hereby permitted shall be constructed entirely of the materials details submitted as part of the planning application unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of visual amenity.

03

Prior to occupation of the dwelling hereby approved, drainage installation shall be carried out in accordance with the details shown on the approved plan and shall thereafter be so retained.

Reason: To ensure that the site does not increase surface water flooding in the area.

04

No additional windows shall be added into any elevation of the dwelling hereby approved unless consent has first been granted in the form of a separate planning permission.

Reason: In the interests of residential amenity.

05

The first floor window on the side gable of the western elevation of the dwelling hereby approved shall be retained for the lifetime of the development as obscurely glazing to level 3 or higher on the Pilkington scale of privacy or equivalent and shall be non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed.

Reason: In the interests of residential amenity.

Notes to Applicant

01

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at www.newark-sherwooddc.gov.uk/cil/

The proposed development has been assessed and it is the Council's view that CIL IS PAYABLE on the development hereby approved as is detailed below. Full details about the CIL Charge including, amount and process for payment will be set out in the Regulation 65 Liability Notice which will be sent to you as soon as possible after this decision notice has been issued. If the development hereby approved is for a self-build dwelling, residential extension or residential annex you may be able to apply for relief from CIL. Further details about CIL are available on the Council's website: www.newark-sherwooddc.gov.uk/cil/ or from the Planning Portal: www.planningportal.gov.uk/planning/applications/howtoapply/whattosubmit/cil

02

The application as submitted is acceptable. In granting permission without unnecessary delay the District Planning Authority is implicitly working positively and proactively with the applicant. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

Background Papers - Application Case File

For further information, please contact Laura Gardner on ext. 5907.

All submission documents relating to this planning application can be found on the following website www.newark-sherwooddc.gov.uk.

Matt Lamb

Business Manager – Growth and Regeneration

A detailed street map of a residential area in London. The map shows various streets, buildings, and a highlighted red area. The red area is labeled "0 m² (0 ha)". The map includes labels for streets such as "The Beacon", "Redroof", "High Gables", "Orchard Close", "The Coach House", "Arnold House", "The Combes", "Lockwood", "Anston", "Appleyard", "Benaiah", "Cattery", "Franklyn", "Brooklyn", "The Vineries", "Allot Gdns", "GP", "Pear Tree Cottage", "Hilltop", "Lower Kirkington Rd", "Path (um)", and "GP". A north arrow is located in the top left corner.