

11/01023/FUL: CONSTRUCTION OF BUNGALOW (PART RETROSPECTIVE – PART AMENDMENT) AT LAND REAR OF 78 WELLAND ROAD, DOGSTHORPE, PETERBOROUGH

VALID: 5 JULY 2011

APPLICANT: MR P MILLER

AGENT: MR J DADGE (BARKER STOREY MATTHEWS)

REFERRED BY: COUNCILLOR C ASH

REASON: DEVELOPER HAS NOT ADHERED TO ORIGINAL PLANNING PERMISSION, SIGNIFICANT NEIGHBOUR OBJECTION AND DETAILED PLANNING HISTORY

DEPARTURE: NO

CASE OFFICER: MISS L C LOVEGROVE

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1 SUMMARY/OUTLINE OF THE MAIN ISSUES

The main considerations are:

- Impact of the development on neighbour amenity

The Head of Planning Services recommends that the application is **APPROVED**.

2 PLANNING POLICY

In order to comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 decisions must be taken in accordance with the development plan policies set out below, unless material considerations indicate otherwise.

Peterborough Core Strategy DPD (2011)

CS2 Spatial Strategy for the Location of Residential Development: New residential development should be focused in and around the urban area, creating strong, sustainable, cohesive and inclusive mixed-use communities and making most effective use of previously developed land.

CS10 Environment Capital: Development proposals will only be supported where they make a clear contribution to the aspiration of the Peterborough Sustainable Community Strategy for Peterborough to become the Environment Capital of the UK.

CS12 Infrastructure: New development should be supported by, and have good access to infrastructure.

CS13 Developer Contributions to Infrastructure Provision: Where a planning obligation is required to meet the principles of Policy CS12, then this may be negotiated on a site-by-site basis however the City Council will encourage payments based on a standard charge set out in the Peterborough Planning Obligations Implementation Strategy SPD (2010).

CS14 Transport: New development in Peterborough will be required to ensure that appropriate provision is made and does not result in a danger to highways safety.

CS16 Urban Design and the Public Realm: New development should respond appropriately to the particular character of the site and its surroundings, using innovative design solutions where appropriate; make the most efficient use of land; enhance local distinctiveness through the size and arrangement of development plots, the position, orientation, proportion, scale and massing of buildings and the arrangement of spaces between them; and make use of appropriate materials and architectural features.

Peterborough Local Plan (First Replacement) (2005)

H7 Housing Development on Unallocated Sites: Residential development in the Urban Area, not allocated for any other use, will be permitted where it would make efficient use of the site in terms of density; respects the character of the surrounding area; provides good quality living conditions; does not result in a danger to highways safety or traffic flow; would not unacceptably constrain development of adjoining land for an allocated use; and would not result in the loss of open space.

H16 Residential Design and Amenity: New residential development will be required to provide a satisfactory standard of daylight and natural sunlight; privacy of habitable rooms; noise attenuation; and private outdoor amenity space.

T10 Car and Motorcycle Parking Requirements: Planning Permission will only be granted for car and motorcycle parking outside the city centre if it is in accordance with standards set out in Appendix V.

DA6 Tandem, Backland and Piecemeal Development: Tandem, backland or other piecemeal development will be required to demonstrate that it can be satisfactorily accommodated on the site in terms of scale and density; would not harm the character of the area; would not harm the amenities of neighbouring residents; can be satisfactorily accessed from the public highway; and would not prejudice the comprehensive development of a larger area.

National Planning Policies

National Planning Policy Framework (NPPF) Consultation Draft (2011)

Planning Policy Statement 1 (PPS1): Delivering Sustainable Development (2005)

Planning Policy Statement 3 (PPS3): Housing (2010)

Circular 05/2005: Planning Obligations

ODPM Circular 05/2005 "Planning Obligations". Amongst other factors, the Secretary of State's policy requires planning obligations to be sought only where they meet the following tests:

- i) relevant to planning
- ii) necessary to make the proposed development acceptable in planning terms;
- iii) directly related to the proposed development; (in the Tesco/Witney case the House of Lords held that the planning obligation must at least have minimal connection with the development)
- iv) fairly and reasonably related in scale and kind to the proposed development;
- v) reasonable in all other respects.

In addition Circular 05/2005 states the following principles:

The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.

Similarly, planning obligations should never be used purely as a means of securing for the local community a share in the profits of development.

3 DESCRIPTION OF PROPOSAL

The application relates to an existing 3 bedroom bungalow which has not been built in accordance with the approved plans. The as-built dwelling differs from the approved scheme (01/01585/FUL) in the following ways:

- Footprint of dwelling increased;
- Dwelling built 0.5 metres closer to the southern boundary;

- Dwelling built 1 metre closer to northern boundary;
- Garage built 1.5 metres closer to southern boundary;
- North-western corner of the dwelling 'filled out' and dwelling constructed 5 metres closer to the southern boundary;
- Arrangement of rooms internally altered to increase the number of primary habitable rooms facing Nos.46-50 Figtree Walk;
- 2.5 metre boundary breeze block wall;
- Alterations to front elevation design;
- Number of windows to the southern elevation increased and size of windows increased also; and
- Ridge height increased by 0.7 metres.

This application includes a series of proposed amendments, which the applicant believes will address the concerns raised by Offices, Members and residents.

This revised scheme has been submitted following extensive discussion between the Applicant, Officers, Ward Councillors and local residents of Figtree Walk albeit it is accepted that the proposal may not overcome all concerns raised by local residents. The revisions to the dwelling include a reduction in the ridge height of the roof to that approved under application reference 01/01585/FUL, construction of a 1.8 metre high close boarded boundary fence, alterations to the glazing of the rear elevation and restriction to the outdoor lighting. The scheme proposes replacement of all four no. double patio doors with fixed standard glazed windows and insertion of a 400mm strip of obscure glazing.

There have been several applications submitted to regularise the situation however none have been successful and at present, the dwelling has no planning permission. Furthermore, an Enforcement Notice requiring the dwelling to be amended in line with the approved plans under application reference 01/01585/FUL was served upon the owner on 3rd August 2010. This Notice was appealed and upheld, with the period of compliance extended to 6th December 2011.

4 DESCRIPTION OF SITE AND SURROUNDINGS

The site was previously part of the rear private gardens to Nos. 78 and 80 Welland Road, a pair of semi-detached dwelling houses. The site is bound to the north east by part of the side wall and the rear garden to No.82 Welland Road and to the south east by the rear gardens of properties along Figtree Walk.

The dwelling itself is situated to the rear of the plot, at its narrowest approximately 2 metres from the rear boundary wall and at its widest 3.2 metres. The form is roughly 'L-shaped' with the main amenity area to the front of the dwelling. A detached garage is situated close to the boundary on the south-west side and access to the highway is provided via a driveway along side No.78 Welland Road. The driveway has not been completed.

5 PLANNING HISTORY

Application Number	Description	Date	Decision
01/01585/FUL	Erection of dwelling	26.02.2002	PERMITTED
08/00615/FUL	Amendments to bungalow design under application 01/01585/FUL – retrospective	30.06.2008	WITHDRAWN
08/01120/FUL	Erection of a 4 bedroom bungalow and single garage with rear boundary wall – retrospective revised scheme	23.12.2008	REFUSED
09/00170/FUL	Erection of a three bedroom bungalow and single garage with rear boundary wall – retrospective revised scheme (as built)	24.04.2009	REFUSED
09/00029/REFPP	Appeal A/09/2107626/WF in relation to application reference 09/00170/FUL	22.12.2009	DISMISSED
09/01266/FUL	Construction of a three bedroom bungalow and	19.01.2010	WITHDRAWN

	single garage with rear boundary wall and 2.2m reed fencing and part obscure glazing to rear windows and doors – retrospective revised scheme		
10/00554/FUL	Retention of dwelling including alterations to rear boundary wall and window glazing	06.07.2010	REFUSED
10/00032/REFPP	Appeal A/10/2131460/WF in relation to application reference 10/00554/FUL and Enforcement Notice	06.12.2010	DISMISSED

6 CONSULTATIONS/REPRESENTATIONS

INTERNAL

Archaeological Officer – No objections

Transport and Engineering – No objections subject to conditions relating to the provision and retention of parking and turning

EXTERNAL

None

NEIGHBOURS

Letters of objection have been received from 2 neighbours raising the following issues:

- The Enforcement Notice should be upheld as the proposed alterations do not address the reasons for its issue
- Concern that the alterations (if approved) would not remain as the applicant has failed to comply with the planning permission since development began
- Proposed landscaping does not fulfil the same role as the trees and hedging removed
- Reduced ridge height will still have a substantial impact on properties along Figtree Walk
- Too close to the boundary
- Loss of aspect/view
- Noise and nuisance generally
- Poor design and unacceptable size/scale
- How many times must a planning application be rightly refused and independent appeals be dismissed before the property is removed

COUNCILLORS

Councillor Ash – In light of previous history, the application should go to Committee for debate and decision.

Councillor Saltmarsh – Objections remain the same, the bungalow should be built as per the original specification with a lower roof and further away from the fence which is in the rear gardens of the properties in Figtree Walk (Nos. 48 and 50 being worst affected). The height and the near proximity of the bungalow affect the quality of life of neighbouring residents as it is very intrusive and not in keeping with properties in the area.

7 REASONING

a) Introduction

There is a long planning history on the site dating back to the implementation of the original planning permission (reference 01/01585/FUL). The current position is the result of an enforcement enquiry which established that the bungalow was not being built in accordance with the approved plans.

The first revised application (08/00615/FUL) was withdrawn due to inaccuracy of the submitted plans. The second application (08/01120/FUL) was refused by Members on 23 December 2008. A third application (reference 09/00170/FUL) was again refused by Members on 26 April 2009 and the

subsequent appeal was dismissed. The reasons for dismissal related to the increased number of openings (and their size) in the rear elevation from that which was approved and the significant overlooking impact this caused to properties along Figtree Walk, the insufficient separation distance which conflicts with the aims and objectives of the Peterborough Residential Design Guide (SPG), and the overbearing impact upon residents along Figtree Walk of the proposed boundary wall. A revised scheme (09/01266/FUL) attempting to address the Inspectors concerns, was withdrawn on 19 January 2010. Following this, a further revised scheme (10/00554/FUL) was submitted again attempting to address the Inspectors concerns in April 2010. This was refused by Members against Officer recommendation on 6 July 2010 for the following reason:

R1 The proposal for the wall and window alterations has arisen as a response to the fact that the dwelling has not been built in accordance with the approved plans. The development has been constructed so it is taller and closer to the boundary with the adjacent Figtree Walk properties with a greater area of fenestration facing them. The proposed wall, whilst preventing overlooking, will be of such a height that it will have an overbearing and detrimental impact on the amenity of the adjacent residents in Figtree Walk and does not overcome the overbearing impact of the dwelling itself which arises as a result of it being built significantly closer and taller than the previously approved plans. The proposal is therefore contrary to the provisions of Adopted Local Plan Policies DA2 and DA6 (Peterborough Local Plan, First Replacement, Adopted 2005).

As a result of the refusal, an Enforcement Notice was served on the landowner and an appeal lodged relating to both the Enforcement Notice and refusal of application 10/00554/FUL. The appeal was dismissed on 6 December 2010 and the time limit for compliance varied until 6 December 2011. The Inspector's report stated:

'...in making his case on ground (f) the appellant's agent itemises a number of proposals which, in my judgement, may have the making of a potential planning permission, which could be capable of satisfying, as far as possible, the concerns of the various parties involved in these appeals. He suggests for instance a reduction in the overall height of the roof to equate to that approved. He also indicates that some repositioning of the back wall in part may be possible without demolishing the present bungalow in its entirety. Matters of this sort would need to be the subject of a fresh planning application. It is not my normal approach to indicate in an appeal decision what areas such a revised application should address. However, there have been various attempts at getting a form of development that would allow the new bungalow to co-exist with its well established neighbours in Figtree Walk and to my mind it seems counterproductive to try to replicate another Inspector's ideas only for another planning application to be rejected yet again. It would be far better if the parties to this dispute were to resolve this matter among themselves without involving The Planning Inspectorate anymore.'

As such, the current application proposal has been submitted in order to try and amend the development to an acceptable scheme.

b) Principle of development

The principle of infill development in this location has already been established under application reference 01/01585/FUL. The site is capable of accommodating the level of development without appearing cramped and as such, is considered acceptable.

c) Impact on the amenity of neighbouring properties

As permission was previously granted for a bungalow on the site, the issue is not how much the impact on neighbours has changed from that approved under 01/01585/FUL, but whether the impact of what has been built and the changes proposed is unacceptable.

The impact on the amenity of neighbouring properties should be considered against No.82 Welland Road and the properties adjoining the site along Figtree Walk. Each of these will be discussed in turn.

No.82 Welland Road

The maximum ridge height of the dwelling constructed has not altered significantly in relation to No.82 Welland Road from the bungalow previously approved albeit the dwelling has been built approximately 0.7 metres closer to the shared boundary (eastern). It is considered that there is sufficient separation distance between the application dwelling and the neighbouring property to ensure that no overbearing or overshadowing impact will occur and as such, the impact on this property has not significantly changed.

Nos.46-50 Figtree Walk

The previously permitted bungalow had a smaller footprint and the ridge height was approximately 0.4 metres lower than that which has been built (ridge height of 5.2 metres). In addition, the dwelling constructed is approximately 1 metre closer to the southern boundary which abuts the properties along Figtree Walk. These neighbouring properties have a lower site level to that of the application site and as such, the property has been considered to have an overbearing impact upon the amenities of occupants of these dwellings.

The application scheme currently under consideration, seeks to overcome this impact by reducing the overall ridge height of the dwelling by 0.4 metres, back to that which was previously approved under application reference 01/01585/FUL. It is considered that whilst the separation distance will not be altered, the development as amended would not result in a significantly overbearing impact upon the amenities of neighbouring residents. Furthermore, the issue of loss of view is not a material planning consideration as there is no right in planning law to a private view.

With regards to the overlooking impact that was considered unacceptable in previous refusals and appeal dismissals, this scheme has sought to overcome these objections. The proposed 1.8 metre boundary fence in combination with the proposed obscure glazing and alterations to the window form of the rear elevation will prevent any occupant of the application dwelling from looking into the gardens and primary habitable rooms of neighbouring properties. At present, there are four no. sets of double patio doors inserted into the rear elevation of the dwelling. It is proposed that all of these will be replaced with static standard glazed windows. In addition to these replacement windows, all windows in the southern elevation are proposed to have the top 400mm obscure glazed. This will ensure that any person standing in these rooms will not have a clear line of sight below the boundary wall.

In relation to the boundary fence and in line with the preferences expressed by surrounding neighbours at pre-application discussions, it is proposed that the fence will stand at 1.8 metres in height when measured from the application site. When measured from the rear gardens of Figtree Walk, this will reach a height of 2.3 metres. It is understood that the previous Appeal dismissal commented on the overbearing impact that a significant boundary wall would have upon the amenities of surrounding residents however the current proposal has sought to reduce the height of the boundary whilst maintaining a height which will prevent overlooking. It had previously been requested by one resident that boundary planting in the form of trees be undertaken to further screen the dwelling. However, given the small area between the boundary and the dwelling constructed this is not considered appropriate or feasible. Such planting would result in a significantly overshadowing impact upon the occupants of the dwelling and would cause an unacceptably harmful impact upon amenity. In addition, maintenance of this landscaped area would be difficult and unachievable.

Further to this, concern has been raised regarding outside lighting that has been erected on the application property. The applicant has agreed that any external lighting be placed no higher than 1.6 metres above ground level when measured from the application site. This would ensure that any lights were behind the proposed boundary fence and as such, will not glare into the rear gardens and habitable rooms of the properties along Figtree Walk. This may be controlled by condition.

d) **Planning Obligations**

The original permission was granted without contribution and under the provisions of the Planning Obligation Implementation Scheme SPD adopted on 8 February 2010 a contribution of £6000 plus a monitoring fee of £120 is required. The applicant has agreed to enter into such an agreement and the process is currently ongoing.

e) **Other matters**

Imposition of Policy CS10

The provisions of Policy CS10 cannot realistically be applied as the dwelling is effectively completed and it would not be possible to retrofit features that would deliver a 10% betterment over building regulations.

In addition, the following comments have also been made:

The Enforcement Notice should be upheld as the proposed alterations do not address the reasons for its issue

The Enforcement Notice served on the owner is still in force and must be complied with by 6th December 2011. However, the applicant has the right to submit a planning application during this time to try and overcome the reasons for its issue. This scheme is currently under determination and is the subject of Members decision.

Concern that the alterations (if approved) would not remain as the applicant has failed to comply with the planning permission since development began

The current scheme (if approved) would reduce the overall ridge height of the development by some 0.4 metres. Any increase in the ridge height would require planning permission from this Authority and if works are carried out without permission, Enforcement action would be taken. With regards to the glazing alterations and boundary wall, it is proposed that these are conditioned to remain in perpetuity.

Proposed landscaping does not fulfil the same role as the trees and hedging removed

It is accepted that the proposed landscaping of climbers would not fulfil the same role as the mature trees and hedging that were removed. However, for the reasons given above, the planting of trees along the boundary would not be an acceptable option.

How many times must a planning application be rightly refused and independent appeals be dismissed before the property is removed?

It is a function of the planning system and of Council's Planning Services to provide planning advice to applicants and to process, assess and formulate recommendations relating to applications made in accordance with the relevant legislation, regulations and guidance. These processes and procedures have been applied with regards to this application. The Enforcement Notice served on the site is still in force and, should this application be refused, must be complied with by 6th December 2011.

8 CONCLUSIONS/REASONS FOR RECOMMENDATION

Subject to the imposition of the attached conditions, the proposal is acceptable having been assessed in light of all material considerations, including weighing against relevant policies of the development plan and specifically:

- The bungalow is situated on a residential area on an unallocated site. Development is considered to be in keeping with the character of the area, providing adequate living conditions for residents and suitable highway access
- The impact on occupiers of neighbouring properties is not substantially worse than the impact of the development permitted under 01/01585/FUL and the proposed mitigation measures will prevent any issues of overlooking.

The proposal is therefore in accordance with Planning Policy Statement1: Delivering Sustainable Development (2005), Planning Policy Statement 3: Housing (2010), Policies CS2, CS14 and CS16 of the Peterborough Core Strategy DPD (2011) and Policies H7, H16, and DA6 of the Peterborough Local Plan (First Replacement) (2005).

9 **RECOMMENDATION**

The Head of Planning Services recommends that this application is **APPROVED** subject to the following conditions:

- C1** Within three months of the date of this permission, the alterations to the southern elevation of the constructed dwelling shall be implemented in accordance with the details shown on drawing no. 4125/1.
Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).
- C2** The dwelling hereby permitted shall be of single storey only; with no habitable accommodation in the roof space.
Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).
- C3** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), the top 400mm of any windows on the southern elevation of the dwelling shall be obscure glazed to a minimum of Level 3 Obscurity. These windows shall be maintained as such in perpetuity.
Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).
- C4** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no windows shall be inserted into any roof slope of the dwelling other than those expressly authorised by this permission.
Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).
- C5** Any external lighting installed on the southern elevation of the dwelling hereby permitted, shall be sited no higher than 1.6 metres above ground level.
Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).

If the S106 has not been completed before the expiration of the application following this resolution without good cause, the Head of Planning, Transport and Engineering Services be authorised to refuse planning permission for the reason stated below:-

- R1** A request has been made by the Local Planning Authority to secure a contribution towards infrastructure implications of the proposal however, no S106 Obligation has been completed and the proposal is therefore considered to be contrary to Policies CS12 and CS13 of the Peterborough Core Strategy DPD (2011).

Copy to Councillors Ash, Miners, Saltmarsh