

10/00554/FUL: RETENTION OF DWELLING INCLUDING ALTERATIONS TO REAR BOUNDARY WALL AND WINDOW GLAZING AT LAND REAR OF 78-80 WELLAND ROAD, DOGSTHORPE, PETERBOROUGH

VALID: 27 APRIL 2010

APPLICANT: MR P MILLER

AGENT: MR B SHEMELD

REFERRED BY: HEAD OF PLANNING SERVICES

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

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.

### Development Plan Policies

Relevant policies are listed below with the key policies highlighted.

#### **The Peterborough Local Plan (First Replacement)**

H7 Housing Development on Unallocated Sites  
 H16 Residential Design and Amenity  
 T1 Transport Implications of New Development  
 DA1 Townscape and Urban Design  
 DA2 The effect of Development on the Amenities and Character of an Area  
 DA6 Tandem, Backland and Piecemeal Development

### National Planning Policies

#### **Material Planning Considerations**

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

## 3 DESCRIPTION OF PROPOSAL

The application seeks planning permission for the retention of the bungalow on the site which is complete and occupied. A dwelling was granted permission under application reference 01/01585/FUL albeit the dwelling was not built in accordance with the approved plans. A summary of the differences is to be provided.

There have been several applications submitted to regularise the situation however none have been successful and at present, the dwelling has no planning permission. This revised scheme has been submitted following extensive discussion between the Applicant, Officers, Ward Councillors and local

residents of Figtree Walk. The revisions to the dwelling include alterations to the glazing of the rear elevation and the construction of a new boundary wall. The scheme proposes replacement of three no. double patio doors with fixed standard glazed windows and insertion of a 400mm strip of obscure glazing to all windows and doors in the rear elevation. The scheme also proposes a 1.9 metre rear boundary wall to be constructed of bricks to match the surrounding area.

#### **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 single garage with rear boundary wall and 2.2m reed fencing and part obscure glazing to rear windows and doors – retrospective revised scheme	19.01.2010	WITHDRAWN

#### **6 CONSULTATIONS/REPRESENTATIONS**

##### **INTERNAL**

None

##### **EXTERNAL**

None

##### **NEIGHBOURS**

Letters of objection have been received from 5 neighbours raising the following issues:

- Building should never have been allowed so close to the boundary with properties along Figtree Walk
- No privacy afforded to surrounding residents
- How long until a final decision is reached
- Different from the approved bungalow
- Living accommodation of dwelling looks directly onto neighbouring properties
- Roof height has been raised from original approval

- Detrimental impact on visual amenity
- Measures proposed address issue of overlooking but not that the dwelling built does not have planning permission
- Too close to surrounding properties
- Concern that there will be external lighting
- Waste of time objecting as residents have not been listened to in the past
- How many times must a planning application be rightly refused and independent appeals be dismissed before the property is removed
- Trees should be planted along the rear boundary to screen the development
- The brick wall should be of a sufficient height to prevent overlooking and constructed of materials to match the surrounding area

## **COUNCILLORS**

**Councillor Ash** – Essential that proposal addresses points raised in Inspectors report. If not then reasons for refusal are still valid.

**Councillor Miners** – If Applicant has met all conditions, taken on board advice and changes from Planning Officers and will construct a boundary wall with bricks suitable to residents of Figtree Walk then no further comments.

**Councillor Saltmarsh** – Objections remain the same, bungalow is built too close to the rear boundary of properties along Figtree Walk and is larger than the original planned dwelling.

## **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. 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 and subsequent discussion has led to the submission of the current application.

### **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 however it is considered that this increase in ridge height and slightly reduced separation distance does 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 1.7 metre high wall 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 three of these will be replaced with static standard glazed windows. The door to the kitchen has been retained as this is broadly in the same location as the previously permitted bungalow. In addition to these replacement windows, all windows and doors in the southern elevation are proposed to have an obscure glazed strip of 400mm from the top down. This will ensure that any person standing in these rooms will not have a clear line of sight below the boundary wall (as shown in drawing no. 4125/3).

In relation to the boundary wall and in line with the preferences expressed by surrounding neighbours at pre-application discussions, it is proposed that the wall 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 wall whilst maintaining a height which will prevent overlooking. Furthermore, the wall is in line with the compromise reached with local residents and can be conditioned to ensure that the materials used in its construction match those found in the surrounding locality. It has 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. Such planting would result in a significantly overshadowing impact upon the occupants of the dwelling and would cause an unacceptably harmful impact upon amenity.

#### 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**

The following comments have also been made:

#### Concern that there will be external lighting

The installation of lighting to the rear of the property would not be a reason to refuse this application. Should such lighting cause a nuisance to neighbours, it could be controlled via relevant legislation.

#### Applicant has ignored previous permission / built without permission / lack of action from the Council

It is not illegal for developers to start building before they have planning permission, or to build something that is not in accordance with approved plans. The planning system allows for this, and

the developer has the right to submit a retrospective application to regularise the unauthorised work which the Local Planning Authority must evaluate on its merits.

The applicant has not broken any planning law.

The Council has taken action by undertaking extensive discussion with the applicant, local Ward Councillors and residents who have objected to the scheme and invited the submission of a revised planning application in line with the scheme agreed.

The applicant is aware that development is at his own risk, that there is a chance that planning permission may not be granted, and that in the event of a refusal he would have the right to appeal to the Planning Inspectorate.

*Waste of planning time / numerous applications make a mockery of the system*

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.

*Trees should be planted along boundary to screen the dwelling*

It is considered that there is insufficient space between the dwelling and the rear boundary wall to accommodate planting of trees. Such planting would obstruct light into primary habitable rooms of the dwelling and would cause a detriment to occupant amenity. Furthermore, as the trees develop and roots spread it is likely that they would compromise the integrity of the boundary wall.

## **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 policies H7, H16, T1, DA2 and DA6 of the Peterborough Local Plan (First Replacement).

## **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 amenity in accordance with Policy DA2 of the Peterborough Local Plan (First Replacement).

**C2 Within three months of the date of this permission, samples of the materials to be used in the construction of the rear boundary wall shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in strict accordance with the approved details and within one month of the date of approval of the materials.**

Reason: In the interests of amenity in accordance with Policy DA2 of the Peterborough Local Plan (First Replacement).

**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 obscure glazing strips to windows on the southern elevation shall be maintained as such in perpetuity.**

Reason: In the interests of amenity in accordance with Policy DA2 of the Peterborough Local Plan (First Replacement).

**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 order to protect the amenity of the adjoining occupiers or the visual amenity of the area, in accordance with Policy DA2 of the Peterborough Local Plan (First Replacement).

If the S106 has not been completed before the expiration of the application (22<sup>nd</sup> June 2010) following this resolution without good cause, the Head of Planning 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 policy IMP1 of the Peterborough Local Plan (First Replacement).

Copy to Councillors Ash, Miners, Saltmarsh