The Planning Inspectorate

Appeal Decision

Site visit made on 11 July 2011

by Andrew Jeyes BSc DipTP MRTPI

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

Decision date: 25 July 2011

Appeal Ref: APP/K2420/A/11/2150169
Rear of 132, 134 and 136 Main Street, Markfield, Leicestershire LE67 9UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Harbot Builders Ltd against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 10/00799/FUL, dated 25 October 2010, was refused by notice dated 27 January 2011.
- The development proposed is the erection of a single storey dwelling.

Decision

1. I dismiss the appeal.

Procedural Matters

2. The application form describes the proposal as a single storey dwelling. However, the submitted plans indicate a dwelling with living accommodation on two floors with a bedroom, shower room and storage at first floor level within the roof space.

3. The decision notice refers to the effect on the living conditions of the occupiers of, amongst others, 144 Main Street. The Council has indicated that this was a typing error and it should be 134 Main Street. In addition, the Council refer to Park Road in the reason of refusal, but the adjoining road is Park Avenue.

Main Issues

4. The main issues are:-
   a] the effect on the character and appearance of the surrounding area;
   b] the effect on living conditions of the future occupiers of the proposed dwelling through overlooking and loss of privacy and on the occupiers of 134 and 136 Main Street and 1 Park Avenue through overbearing impact; and
   c] whether the lack of a financial contribution towards the provision of open space and play facilities would lead to unacceptable pressure on existing facilities in the local area.

Reasoning

5. The site is currently occupied by a low single storey building used as a workshop with the storage of building materials in front, served by an access from Main Street that runs between Nos 136 and 138. The Council indicate that the building had a temporary planning permission that expired in 2010.

Character and Appearance

6. The site is within the built-up area of the village just to the north of the village centre. Frontage development is typical of the area, but with some development, often older, not having a formal frontage relationship, especially around the village

centre. The boundaries of the site tie in with those of other surrounding properties in Park Avenue and Main Street. The proposal for a dwelling to the rear, smaller in footprint than the existing workshop, would reflect this more varied character and allow a safe and convenient access. There are properties set back from the road at 156 and 186 Main Street, but both occupy a gap in the frontage and are visible as part of their respective street scenes. As such, they are not comparable to the proposal.

7. The site is small and the dwelling would extend close to both eastern and western boundaries with the front being entirely given over to parking and access. The site would have very limited rear garden space with an average depth of around 4.5m. The use of the roof space to provide accommodation, would give a steep sloped roof that would not reflect the character of the area and which would intrude into general views of the site from other properties and through vegetation from the adjoining open space to the south.

8. Whilst the backland nature of the development in this case would not have an adverse impact on the character and appearance of the area, the proposed layout and design would result in harm. This would be contrary to saved Policy BE1 of the Hinckley & Bosworth Local Plan 2001 [LP], Planning Policy Statement 3: *Housing* and guidance in adopted Supplementary Planning Guidance: *New Residential Development* [SPG:NRD]. These seek a high standard of design that will safeguard and enhance the existing environment.

Living Conditions

9. The site backs onto the rear gardens of surrounding properties on three sides. There are existing walls, fences and hedges other than along the boundary with 2 Park Avenue, which is composed of a thin belt of hedging, bushes and trees. These are all of sufficient height to prevent overlooking and loss of privacy from gardens and ground floor windows. Whilst views from upper floors would allow greater visibility of the site, the layout and design would prevent any harmful overlooking resulting in loss of privacy for future occupiers.

10. Whilst described as single storey, the dwelling would have a large and comparatively steeply sloping roof to accommodate rooms within the roof space. This roof would be directly behind No 134 and be visible from Nos 136 and 132. The building would have a significant overbearing and harmful impact on outlook from these properties. 1 Park Avenue backs onto the turning and parking area at the end of the drive, which reflects the existing situation, with the proposed dwelling some 9.5m from this boundary. The distance apart of the properties and the existing boundary treatment would prevent harm to the living conditions of the occupiers of No 2 through overbearing impact.

11. Whilst the proposal would neither give rise to overlooking of future occupiers of the proposed house nor have an overbearing impact on the occupiers of No 2, it would harm the living conditions of the occupiers of adjoining houses on Main Street through an overbearing impact that would harm outlook. This would be contrary to saved LP Policy BE1 and guidance in SPG:NRD that aim to ensure a high standard of design that does not adversely affect the occupiers of neighbouring properties.

Open Space Contribution

12. Statutory tests are set out in the Community Infrastructure Regulations 2010, which reflect those set out in Circular 05/2005: *Planning Obligations*, indicating why the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonable related in scale.

13. Saved LP Policy REC3 sets out the requirements for the provision of open space and play provision, and indicates that for a development of this size the level of

provision will be determined by individual circumstances. In support of this policy, adopted Supplementary Planning Document: *Play and Open Space* [SPD:POS] indicates direct provision or the payment of a commuted sum to a new or improved opportunity elsewhere, as long as this is within easy reach of the relevant development. Saved LP Policy IMP1 provides the policy background for such contributions.

14. The Council indicates that the site is within 400m of an appropriate open space that is also suitable for improvement; a commuted sum of £1250.80 would be required. There is therefore a need arising that is related directly to the impact of the proposed development that meets the tests set out in the Community Infrastructure Regulations 2010. A planning obligation has not been submitted.

15. To overcome this, the appellant has suggested the imposition of a condition requiring a planning obligation under Section 106 and the Council's suggested conditions reflect this. However, Circular 05/2005 advises that, as per the guidance in Circular 11/95, permission cannot be granted subject to a condition that the developer enters into a planning obligation under Section 106 of the Act or an agreement under other powers. Nor can a condition require a financial contribution. In the absence of a suitable planning obligation, it would not be appropriate to allow the appeal.

16. The lack of a suitable agreement to secure a financial contribution towards open space and play would put further pressure on existing facilities and would not comply with saved LP Policies IMP1 and REC 3 or guidance in SPD:POS.

Other Matters

17. I note the appellant's assertion that future purchasers would not buy a house with which they are not satisfied and that the Council has made design comments without an Architect on the staff. However, Government and Development Plan policy is to achieve a high quality of design that meets the current and future needs of occupiers and it is appropriate for the Council to formulate and act on its views of development proposals. The absence of an Architect on their staff does not indicate that the Council is incapable of formulating educated, qualified and experienced views in assessing proposals for development.

Conclusions

18. The backland nature of the development would not have an adverse impact on the character and appearance of the area and the proposal would neither give rise to overlooking of future occupiers of the proposed house nor have an overbearing impact on the occupiers of No 2. However, these matters do not outweigh the harm that would arise from the proposal to character and appearance and to the living conditions of the occupiers of adjoining houses on Main Street through an overbearing impact that would harm outlook. Nor would it overcome the lack of a suitable planning obligation. For these reasons and having taken account of the representations of local residents, the appeal is dismissed.

Andrew Jeyes
INSPECTOR