
Appeal Decision

Hearing held on 2 December 2014

Site visit made on 12 January 2015

by Helen Heward BSc Hons MRTPI

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

Decision date: 18 February 2015

Appeal Ref: APP/Z2315/A/14/2225780
4-6 Tennis Street, Burnley BB10 3AG

- 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 Mr Peter John and Mrs Eileen Marie Rowe against the decision of Burnley Borough Council.
 - The application Ref APP/2014/0016, dated 21 January 2014, was refused by notice dated 20 March 2014.
 - The development proposed is a 2 storey extension to rear of 4 Tennis Street, single storey extension to rear of 6 Tennis Street, detached garage on land adjacent to canal.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Peter John Rowe and Mrs Eileen Marie Rowe against Burnley Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The description of development given on the planning application form is:-
 1. *Common extension to rear of 4/6 Tennis Street to facilitate their formation into a single dwellinghouse.*
 2. *Excavation to front of 4 & 6 Tennis Street to permit installation of larger doors/windows in their basements in connection with their use as habitable rooms.*
 3. *Construction of a garage (30m²) at the end of the garden on the combined property for private use only in connection with the occupation of the property.*

At the hearing the appellants agreed that a different description, as given on the appeal form and the Council's decision notice, was more appropriate, and that is the description I have used.

4. The proposed garage would be partly on the Canalside Conservation Area boundary. Although the application was not advertised at the time, it has been since and all interested parties have had an opportunity to comment. One

letter was received in response to the advertisement, and I have taken it into consideration in reaching my decision.

5. The plans submitted with the appeal did not include floor plans for the proposed extensions to 4 and 6 Tennis Street. With the agreement of the parties at the hearing, these were submitted afterwards, and all parties were given an opportunity to submit comments in writing. In reaching my decision I have taken into consideration a response from the Council and a reply from the appellants.

Main Issues

6. The main issues are:-

- (1) The effect of the proposed garage upon the character and appearance of the site and locality, with particular regard to its location within a Major Open Area and adjoining the Canalside Conservation Area, and
- (2) The effect of the proposed extensions to 4 to 6 Tennis Street upon the living conditions of the occupiers of the existing dwelling 45 Colne Road.

Reasons

Character and appearance

7. The site of the garage is part of a small piece of land that links between the Canalside Conservation Area (CCA) and adjacent parklands. All of which are designated as a Major Open Area (MOA) under Policy CF3 of the Local Plan. To protect land within MOA's for their recreation and/or amenity value Policy CF3 requires, amongst other things, that new development is not of a size or scale that detracts from the character of the area, and that it does not have a detrimental effect on features of historic value. The appeal site is privately owned land but there is nothing to say that the requirements of Policy CF3 apply only to open amenity areas.
8. The site is within the garden area of a dwelling that is presently under construction, in a different ownership and unrelated to the appellants' proposed garage¹. The dwelling is largely outside of the MOA but the garage would be in a part of its garden and where vehicular access is indicated. Due to significant level changes, the southern and eastern boundaries of this garden would need to have a retaining wall, and it is reasonable to assume that there would be some means of enclosure for privacy. The southern wall of the garage would generally be along the garden's southern boundary line and would, in effect, visually replace a section of its boundary wall/enclosure. Due to level changes it is unlikely that it would be significantly higher.
9. Another planning permission² includes the site of the garage and provides for a 2.5m high stone wall along the road frontage directly in front of the site of the garage. The maximum height of the garage is indicated at approximately 2.7m, and would therefore only exceed the height of the approved wall by a small amount. Therefore, seen within the context of the new dwelling and its garden and access the garage would appear like a domestic curtilage building one might expect to see in a garden and in this way would not be incongruous. Nor would the scale and height of the garage be materially more intrusive or

¹ LPA reference APP/2013/0350

² LPA ref APP/2012/0175

enclosing or detract from the openness of the area, than the approved development.

10. However, the southern boundary broadly corresponds with the northern boundary of the CCA, and here the levels fall steeply away to the canal side. Where development has taken place along this line high retaining walls and other structures have been built side by side. Together with other canal related engineering works they make a strong and almost continuous feature demarking the edge of the CCA and are a significant characteristic in the locality. The appellants advise that to positively contribute to the character of the CCA, the garage would be built of stone and slate and has been designed to face into the CCA, and to reflect the characteristics of similar walls and structures. For this to be successful it would also be necessary for the garage to appear as an extension, or part of a continuation of the walls, along the CCA boundary line. Otherwise, notwithstanding the detailing, the garage would appear isolated and this would be incongruous and a detractor from the character and appearance of the CCA.
11. At the hearing the appellants advised that the garage could be attached to other walls and they also proposed that a condition could be attached preventing the garage being built until such time that a boundary wall is in place. However, the site of the new dwelling is not within the appellants' control and there is no evidence to demonstrate how the appellants' could secure the building of boundary walls on land which they do not control. Therefore, having regard to advice in the National Planning Practice Guidance³ I am not satisfied that such a planning condition would be enforceable or reasonable in all other respects. It follows that I can only conclude that the proposal as submitted would fail to preserve the character and appearance of the Canalside Conservation Area.
12. A garage can be safer and more visually attractive than cars parked in the open, but the site is relatively remote from No 4 and 6 Tennis Street and accessed via a road which is locked at times. I am not therefore persuaded that the garage would have a significant effect upon parking and highway safety conditions on Tennis Street, Lawn Street and Thursby Square. Moreover, there is nothing to demonstrate how the appellants' garage and the vehicular access for the new unrelated dwelling would work together. From the limited information before me I cannot be certain that the proposal would not affect the vehicular access for the dwelling and as a consequence compromise the ability to use the parking for the new dwelling.
13. A letter from the occupiers of Bank Hall Dry Dock supports a garage that is in keeping with the status of a conservation area, and considers that the proposal could improve tidiness, safety and security. A contribution to a barrier on the road is requested, although that is not a planning matter for my consideration.
14. Although the harm that would arise would be less than substantial, there are no public benefits that outweigh this harm for the purposes of the assessment required under paragraph 134 of the National Planning Policy Framework (the Framework). I conclude that the proposal would not preserve the character and appearance of the Canalside Conservation Area and would fail to satisfy the requirement of Policy CF3 that development does not have a detrimental effect on features of historic value.

³ ID 21a-004-20140306 Updated 06 03 2014

Living conditions

15. Policy H13(b) (i) of the Burnley Local Plan Second Review (the Local Plan) seeks to ensure that all extensions and conversions of existing dwellings do not adversely affect the residential amenity of neighbouring properties through overlooking, lack of privacy or reduction of outlook or daylight. These aims are consistent with advice at bullet point 4, paragraph 17 of the Framework that planning should always seek to secure a good quality design and a good standard of amenity for all existing and future occupants.
16. No's 4 and 6 Tennis Street are attached terraced properties in an area characterised by dense terraced housing. The proposal would extend the rear of No's 4 and 6 at ground floor level and the rear of No 4 at first floor level. The ground floor elements would have little effect upon the outlook of surrounding dwellings due to high walls along the alleyway, and the nature of the layout is such that the only dwelling to afford a clear direct view of the proposed first floor extension would be No 45 Colne Road.
17. No 4 and No 45 are only separated by small rear yards and a narrow access way. The distance between their main rear elevations is already restricted and the proposal would extend towards the rear of No 45, reducing the gap to approximately 11.75m. The rear elevation at No 45 contains two windows. The ground floor window is the only window to a sitting room. From this window the outlook is restricted by traditional two-storey outshot extensions to either side. At ground level the view is further restricted by a tall boundary wall and gate to the alley way. Above, the view is dominated by the first floor and roof of No 4 with only a small strip of sky visible.
18. The proposed extension at No 4 would have a lower roof than the main roof and so would not materially impinge upon the amount of sky that is seen in this view. Additionally, the orientation of No 4 and No 45 are such that the proposal would not significantly increase the shadows cast over this or other windows at No 45. Nor would the proposals otherwise materially impact upon the amount of sunlight and daylight reaching No 45 and there is no evidence to say that the proposals would have an effect upon the existing level of damp in the building at No 45.
19. However, the proposed first floor rear wall would be clearly seen occupying the main part of the view. The closeness of this wall and the way that it would occupy almost the full width of the view would be oppressive for the occupiers of No 45 when in their rear sitting room. I am mindful that the existing situation is already quite oppressive, but the proposal would make it more so.
20. The occupiers of No 45 are also concerned that the proposal would result in a loss of privacy. No 4 has a first floor window directly facing No 45 and I heard that in the past this had served a bathroom and a bedroom at different times. However, the proposals include a new bedroom window facing No 45 and this window would be closer. Therefore, it would offer a closer direct view and this would make the existing overlooking worse, to the detriment of the privacy of the occupiers of No 45. This would add to the harm that I have already identified. If I were minded to allow the appeal a condition could be attached to prevent further windows, but this would not mitigate the impact from the proposed bedroom window.

21. At the hearing the appellants submitted that the existing distances between these terraces reflect Victorian building standards and may be greater than between other Victorian terraces. Additionally, they submit that the living conditions of the occupiers of No 45 are already compromised and the proposals would not significantly change the existing situation, nor would they be any different to the existing situation between No 2 and No 43 as the rear wall of No 2 is set on the same alignment as that proposed for No 4. However, whilst the existence of other situations, and explanations as to how situations have arisen, are material considerations they do not amount to good planning reasons to allow a compromised situation to be made worse.
22. The explanatory text to Policy H3 of the Local Plan advises that separation distances of 20m for facing habitable room windows, and 15m between a main outlook window and a blank two-storey gable current standards are required for 'new housing'. Although these standards are mainly directed at new dwellings they are nonetheless a useful 'yardstick' and the extent to which they are not met in this case is a relevant indicator of an already significantly compromised situation.
23. Paragraph 6.4 of the Local Plan acknowledges that standards can be relaxed if there is a justifiable reason for doing so, for example to promote reuse or conversion of an existing building and Policy H9 (a) advises that proposals which contribute to the repair, improvement and conversion of existing property in this urban regeneration area⁴ will be approved. The locality is mainly characterised by terraced dwellings. Most appear of modest scale and the proposal would create a larger dwelling which would make a small contribution to increasing the supply and choice of larger family dwellings close to the town centre. However, paragraph 6.4 does not mean that all proposals will be acceptable. The policies need to be read together and a balance reached between promoting urban regeneration objectives and potential adverse impacts.
24. The appellants consider that the submitted scheme which focusses on No 4 would be the least disruptive during the conversion process. They submit that No 4 is uninhabitable and that substantial repairs are required to make it habitable. To make such works viable, they say that substantial renovations and a two storey extension in some form are required, partly because of the costs of the repairs and partly because of the low value of small terraced dwellings in the area. I am also advised that there are constructional difficulties that lead the appellants to believe that their proposals are the only technically feasible scheme which they could afford and implement. However, although the appellants describe issues and options, no convincing structural or viability evidence has been presented about the submitted scheme and other options to demonstrate that the proposal is the only viable means of bringing No 4 back into use as a residential dwelling.
25. I conclude that the adverse effects of the proposed extensions to No 4 and 6 Tennis Street upon outlook and privacy would adversely affect the existing living conditions of the occupiers of No 45 Colne Road. Accordingly, the proposed extensions to No 4 and 6 Tennis Street would be contrary to Policy H3(d) and Policy H13(b) (i) of the Local Plan, and advice at paragraph 17 of the Framework.

⁴ H9/3 – Daneshouse

Human rights and the rights of children

26. The appellants' explained at the hearing that they are seeking to create a large single house with five bedrooms so that they can offer their daughter, her partner and three grandchildren a secure long term home, so that they can all live together as an extended family for a long time.
27. From what I heard at the hearing the appellants' daughter has had a number of significant personal difficulties. Consequently at the time of the hearing one of the children was the subject of a temporary custody order and a decision as to their future was pending. I am told that the other children divide their time between their mother and father and that the appellants regularly help care for them at No 6 Tennis Street.
28. The High Court judgement in *AZ v Secretary of State for Communities and Local Government and South Gloucestershire District Council (2012)* confirmed that the Article 8 rights of the family as a whole must be taken into account in the overall planning balance. The best interests of the children in this case must be a primary consideration in the determination of this appeal.
29. In the balancing of these interests, *ZH (Tanzania) v SoS Home Department (2001) UKSC 4* established that the best interests of the children are a primary consideration and must be considered first. This does not, of course, mean that the best interest of the children is a factor of limitless importance in the sense that it will prevail over all other considerations. Nonetheless, no other factor should be given more weight, as a matter of policy.
30. At the hearing the appellants advised that this proposal is their expressed aspiration and hope, but there is no direct evidence about the wishes of their daughter for her children. I was also told that the appellants' daughter presently has housing and the appellants' have advised that they expect the Court will recommend that the child is returned to their natural parents. There is no evidence to say that the appellants' proposals at No 4 and 6 Tennis Street have a bearing upon the Court's considerations regarding the best interests of the child. Nor is there any evidence to say that the present arrangements that the appellants and their daughter provide for caring for the other children could not continue without the proposed extension.
31. In assessing the benefits for the appellants' wishes in respect of their family life it is necessary to consider whether such interference would be proportionate in the circumstances of this case, and to balance the benefits arising from the proposal against the harms to the public and community interests in planning terms. I have no doubt that a larger dwelling would considerably help the appellants house their family and provide support to them as an extended family.
32. The appellants state that as well as providing the requisite number of bedrooms, the proposed layout has been proposed as a means of ensuring that everyone would have individual privacy. These are not unreasonable goals in themselves, but there is nothing to say that the submitted scheme is the only means of achieving them, or that the submitted proposals are essential in their entirety in order to look after the best interest of the children. In addition, notwithstanding the appellants' submissions, there is an absence of evidence to demonstrate that extending No 4 and 6 Tennis Street in the manner shown on the submitted plans would be the only solution, and I am strengthened in

my conclusion in this regard by the fact that the appellants' have advised that they are considering other options.

33. Overall, there is no evidence to say that a refusal of planning permission in this case would amount to interference with the right to respect for the private family life of the appellants and their daughter, and the best interests of her three children. Therefore in the overall planning balance I conclude that although the appellants' family considerations and the interests of the children carry great weight in this case, the evidence does not tip the balance in favour of the proposal.

Overall Conclusion

34. The garage would not preserve the character and appearance of the Canalside Conservation Area, and would fail to satisfy the requirement of Policy CF3 of the Local Plan that development does not have a detrimental effect on features of historic value.
35. In respect of the extensions to No 4 and 6 Tennis Street the evidence about the appellants' family considerations and the interests of the children, together with the modest positive contribution that the proposal would make to regeneration of the locality and the supply of larger houses are not sufficient to outweigh the adverse effects upon the living conditions of the occupiers of No 45 Colne Road. Accordingly, the proposed extension to No 4 and 6 Tennis Street would be contrary to Policy H3(d) and Policy H13(b) (i) of the Local Plan, and advice in the Framework.
36. Therefore, and taking all other matters raised factors into consideration, I conclude that the appeal should be dismissed.

Helen Heward

PLANNING INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P J Rowe	Appellant
Mrs E M Rowe	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Rogan	Planning Officer, Burnley Borough Council
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