



The Planning Inspectorate

Temple Quay House
2 The Square
Bristol
BS1 6PN

Direct Line:
Customer Services:
0303 444 5000

Email:
despatch.admin@pins.gsi.gov.uk

www.planningportal.gov.uk/planninginspectorate

Mr Mark Shipman BA (Hons) DURP MRTPI
South Lakeland District Council
South Lakeland House
Lowther Street
Kendal
Cumbria
LA9 4DL

Your Ref: SL/2014/0379
Our Ref: APP/M0933/W/14/3001390

06 August 2015

Dear Mr Mark Shipman BA (Hons) DURP MRTPI,

Town and Country Planning Act 1990
Appeal by D J Stephenson Builders Ltd
Site Address: Former Garden of 49 Priory Lane, Kents Bank, Grange over Sands,
Cumbria, LA11 7BH

I enclose a copy of our Inspector's decision on the above appeal(s).

If you have queries or feedback about the decision or the way we handled the appeal(s), you should submit them using our "Feedback" webpage at <http://www.planningportal.gov.uk/planning/planninginspectorate/customerfeedback/feedback>.

If you do not have internet access please write to the Quality Assurance Unit at the address above.

If you would prefer hard copies of our information on the right to challenge and our feedback procedure, please contact our Customer Service Team on 0303 444 5000.

Please note the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a copy of the forms for lodging a challenge, please contact the Administrative Court on 020 7947 6655.

The Planning Inspectorate cannot change or revoke the outcome in the attached decision. If you want to alter the outcome you should consider obtaining legal advice as only the High Court can quash this decision.

Yours sincerely,

Natalie Dun
Natalie Dun

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Appeal Decision

Site visit made on 29 April 2015

by Iwan Lloyd BA BTP MRTPI

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

Decision date: 6 August 2015

Appeal Ref: APP/M0933/W/14/3001390

Former garden of No. 49 Priory Lane, Kents Bank, Grange over Sands, Cumbria LA11 7BH

- 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 D J Stephenson Builders Ltd against the decision of South Lakeland District Council.
 - The application Ref SL/2014/0379, dated 3 April 2014, was refused by notice dated 30 October 2014.
 - The development proposed is a new bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for a new bungalow at the Former garden of No. 49 Priory Lane, Kents Bank, Grange over Sands, Cumbria LA11 7BH in accordance with the terms of the application, Ref SL/2014/0379, dated 3 April 2014, and revised plan drawing no. 1433 01 Revision G, subject to the following conditions:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows shall be constructed in the roof-slopes of the dwelling.
 - 2) The boundary fence along the common boundary with No. 49 shall not exceed 1.8m in height at any time when measured from the ground adjacent to the site driveway.
 - 3) All planting, seeding or turfing and proposed ground levels within the site comprised in the approved details of landscaping shown on drawing no. 1433 01 Revision G shall be carried out in the first planting and seeding seasons following the occupation of the building; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
 - 4) The dwelling shall not be occupied until the surface water drainage works have been completed in accordance with the submitted plans.
 - 5) The dwelling shall not be occupied until the parking area has been provided in accordance with drawing no. 1433 01 Revision G. The parking area shall be kept available for the parking of motor vehicles at

all times and shall be used solely for the benefit of the occupants of the dwelling of which it forms part and their visitors and for no other purpose and permanently retained as such thereafter.

- 6) The dwelling shall not be occupied until the external wall treatment has been completed in accordance with drawing no. 1433 01 Revision G.

Preliminary matters

2. Planning permission was granted for a single storey dwelling on the site in May 2012 under reference SL/2012/0210. The Council contends that what has been built does not accord with the approved plans, and that the development is in breach of condition 5 of the planning permission. This required that finished floor levels were agreed with the Council prior to development taking place. The Council indicate that this was not done.
3. The external walls and roof of the building have been erected, and the Council maintain that the works do not benefit from any planning permission. This appeal is against the refusal planning permission to regularise what has been built on site. The Council has issued an enforcement notice dated 23 February 2015, but this planning appeal is not against that notice.
4. Revised plans have been submitted during the course of the planning application. The latest version was drawing no. 1433 01 Revision G. Since the Council had considered it, there is no prejudice in dealing with this appeal on the basis of this drawing.

Main Issue

5. This is the effect of the development on the living conditions of occupiers of Nos. 47 and 49 Priory Lane in relation to outlook.
6. I have approached this appeal on the basis that the planning application was submitted to me in the first instance, and I have assessed the impact of the development in relation to the determining issue in that regard.
7. Whether or not the development as built falls outside the terms of the preceding planning permission is not a matter I can determine in the context of an appeal made under section 78 of the Act as amended. As a result, I can only give but limited weight to the status of the planning permission, as a fallback position, and this matter could be the subject of a separate enforcement appeal.
8. The Council also states that the planning permission plans showed no spot levels and had no dimensions marked on them. However, datum levels are now shown on the latest version of the plans for consideration and reflect that which has been built. In addition the fences (one set behind the original fence) separating No. 47 and 49 are in situ, and therefore I can fully assess the impact of the development as a whole, which reflects that of the latest iteration of the submitted plans.

Reasons

9. The development is positioned in the former rear garden of No. 49. No. 49 and No. 47 are semi-detached single storey properties situated to the south-east of the appeal site. Nos. 49 and 47 are positioned some 1.5m below the floor level of the development and are separated from it at a distance of some 14m.

There is a modest sunroom projecting some 2.5m from the south-east elevation of the development within this separation distance but it is limited to a width of some 3m and is set about 0.8m below the main floor level of the development.

10. I viewed the site from several positions including from the site entrance to No. 49 and from inside the constructed building and outside within the confines of the appeal site. The floor-slab level of the development is roughly comparable to the adjacent footway and the expectation would be for the levels of the drive to be graded to a surface level just below the footway accounting for the slope in the land. In my view, the development as constructed sits comfortably in its position relative to the road. The eaves of the building are not significantly higher than the eaves of No. 49 and the ridge is lower. A floor-slab level difference of 1.5m between that of No. 49 and the development is not significant in the context of the separation distance that exists between them. My visual inspection of the site reaffirms my view that the development is not overbearing, and that it would not significantly erode the outlook to a harmful degree.
11. The expectation that there would be no building permitted on this plot given that the preceding permission was not complied with is not realistic. The expectation that the development would have been sunk into the ground principally due to the imposition of the condition on the former permission is also unlikely, particularly since condition no. 5 does not preclude the approved plan from being accepted in the first instance. The approved plan shows the street scene view of the development comparatively level with the footway as it is shown in this appeal. Had the Council wanted to prevent that plan from being approved it should have expressly stated that in the condition on levels.
12. In any event, I am satisfied that the impact of the development is not harmful to the living conditions of occupiers of Nos. 47 and 49 Priory Lane in relation to outlook. The outlook from No. 49 takes into view the boundary fence and then the upper graded slope of the hipped roof of the development which is set-back an acceptable distance within its plot. The newly created fence of the development is not substantively different to that of the approved scheme in terms of position. It may have been erected on made-up ground but its height is roughly 1.8m from the driveway level. My conclusion is the fence the subject of this development is not unduly oppressive, and the appellant is willing to accept a condition to prevent a higher fence height under subsequent attained permitted development rights.
13. As a separate point, I find that privacy between the development and adjoining houses within acceptable limits. The lower sunroom extension steps down in level and adequate boundary screening and separation distances prevent any harm in terms of overlooking. The sunroom adds very little in terms of size and bulk to the development to that of the previous permission. The Council also indicates that the development has much greater visual impact than originally envisaged, but for reasons I have already explained in paragraph 11 the expectation that the dwelling would be sunk into the ground would not be borne-out, as the condition intended. Given the diversity of house types and styles in the area, I do not consider that the development harms the appearance and character of the area.

14. I therefore find the development to comply with policies CS1.1, CS1.2 of South Lakeland Core Strategy and saved policy S2 of the South Lakeland Local Plan.
15. I conclude that having regard to representations made in this appeal from interested parties and the Council that this appeal should be allowed.
16. I have considered the Council's list of suggested conditions and the appellant's view concerning the boundary treatment. I do not consider that an implementation condition is needed, and the landscaping/levels and boundary treatment condition requiring full details are also unnecessary, given the detail on the approved plan. A scheme to agree surface water treatment is also unnecessary for the same reason. The exclusion of permitted development rights for walls/fencing is also unnecessary. I have imposed a condition specifying the height limitation on fencing to the boundary with No. 49.
17. I have included a condition restricting permitted development for windows/dormer windows to be inserted in the roof slopes of the dwelling as opposed to the Council's reference to certain elevations. I have also modified the wording of the parking area condition and added a condition requiring completion of the external wall treatment of the dwelling. Conditions 1 and 2 are imposed in the interests of living conditions of nearby residents in relation to privacy. Conditions 3 and 6 are imposed in the interests of the visual appearance of the area. Condition 4 is needed to prevent surface water flooding, and condition 5 is necessary in the interests of highway safety.

Iwan Lloyd

INSPECTOR