

BOROUGH OF KETTERING

Committee	Full Planning Committee - 18/12/2018	Item No: 5.3
Report Originator	Alan Chapman Development Officer	Application No: KET/2018/0564
Wards Affected	Rothwell	
Location	101 Rushton Road (land to rear), Rothwell	
Proposal	s.73A Retrospective Application: 1 no. dwelling (changes to approval KET/2015/0350 including increase in roof height to accommodate first floor habitable rooms, additional roof lights, addition of front porch, addition of an outbuilding, increase in boundary fence height and re-positioning of garage)	
Applicant	Mr D Smith Distinction Developments	

1. PURPOSE OF REPORT

- To describe the above proposals
- To identify and report on the issues arising from it
- To state a recommendation on the application

2. RECOMMENDATION

THE DEVELOPMENT CONTROL MANAGER RECOMMENDS that this application be APPROVED subject to the following Condition(s):-

1. Prior to the first occupation of the development hereby permitted the access, driveway and parking areas (including parking area to the front of No.101, Rushton Road), and the drainage channel across the vehicular access shall be constructed in accordance with Plan 17313_01G received by the Local Planning Authority on 17 October 2018. The access, all parking areas and the entire length of the private driveway shall be finished with a hard bound surface. The maximum gradient of the access and private driveway shall not exceed 1 in 15 over the first 5 metres from the back-edge of the public highway boundary. The access, parking areas and private driveway shall be permanently retained in this form.

REASON: To prevent an adverse impact on the highway network in accordance with Policy 8 of North Northamptonshire Joint Core Strategy.

2. Prior to the first occupation of the development hereby permitted, the boundary treatments as shown on Plan 17313_01G received by the Local Planning Authority on the 17 October 2018 shall be carried out and retained as such thereafter.

REASON: In the interests of protecting residential privacy in accord with Policy 8 of the North Northamptonshire Joint Core Strategy.

3. The dwelling shall not be occupied until those elements which are not approved have been removed and the dwelling has been constructed in complete accordance with the plans hereby approved.

REASON: To clarify what is hereby approved and to protect neighbour amenity in accordance with policy 8 of the North Northamptonshire Joint Core Strategy.

4. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no building, structure or other alteration permitted by Classes A, B, C or E of Part 1 of Schedule 2 of the Order shall be constructed on the application site unless planning permission has first been obtained from the local planning authority.

REASON: To protect the amenity and privacy of the occupiers of adjoining property in accordance with Policy 8 of the North Northamptonshire Joint Core Strategy.

Officers Report for KET/2018/0564

This application is reported for Committee decision because there are unresolved, material objections to the proposal and the proposal is a contentious application which, in the opinion of the Head of Development Services, is a matter for the decision of the Committee.

3.0 Information

Relevant Planning History

AOC/0350/1501, APPROVED, 04-04-18, Condition Nos. 4 (materials to be submitted) and 7 (contamination investigation) of KET/2015/0350

KET/2009/0217, REFUSED, 23-06-09, Erection of 4 no. dwellings

KET/2012/0541, REFUSED, 06-12-12, Single storey dwelling

KET/2015/0350, APPROVED, 02-07-15, 1 no. single storey dwelling and parking provision for 101 Rushton Road

Site Visit

Officer's site inspection was carried out on 07/09/2018 and 12/09/2018

Site Description

The application site is situated on the northern edge of Rothwell Town which has an access on the junction of Rushton Road and Shotwell Mill Lane. The site comprises rear garden land totalling a size of approximately 0.16 hectares to the rear of No.101 Rushton Road. The site backs onto garden land of number 99 Rushton Road and properties located in Spencer Street. The site is separated from the rear garden of 101 Rushton Road by a close boarded timber fence approximately 2 metres in height. The site is also separated from the rear gardens of the Spencer Road properties by a similar fence to a height of 2.4.

101 and 99 Rushton Road are a pair of semi-detached Victorian red brick homes. Rushton Road at this point is characterised by dwellings of varying architectural styles and appearance with generous plots and street frontages.

Proposed Development

An earlier outline planning permission (KET/2012/0541) was allowed through an appeal for the construction of a single storey detached dwellinghouse where the applicant (Mr Jones of 101 Rushton Road) specified indicative dimensions of:

- Maximum length 19 metres
- Maximum depth 10 metres
- Maximum eaves height 3 metres
- Maximum ridge height 5 metres

The appeal (Decision dated 18 November 2013) Inspector based his decision on these indicative measurements and included in his decision notice a planning condition (No. 4) that stated: *"The building hereby approved shall not exceed the following scale parameters:..."*. (As detailed above.)

Following this appeal decision, the applicant (Mr Jones of 101 Rushton Road) submitted a full detailed planning application KET/2015/0350 for the construction of a single storey detached 3-bedroom dwellinghouse, with a detached single garage, which was granted permission on the 2nd July 2015. This 2015 proposal observed the above scale parameters with the following dimensions:

- Maximum length 18.65 metres
- Maximum depth 9.0 metres
- Maximum eaves height 2.5 metres
- Maximum ridge height 4.8 metres

Following this decision construction on this dwellinghouse commenced during the earlier part of 2018. Concerns were then raised in June 2018 that the dwellinghouse was not being constructed in accordance with the approved KET/2015/0350 drawings. Investigations confirmed this to be true and that the height of the dwellinghouse was higher than approved. Among other discrepancies observed were the development was not in accordance with the approved drawings were:

- Creation of a front porch
- No chimney
- Garage in different location and size
- Erection of an outbuilding
- Creation of first floor accommodation
- 4 bedrooms

These breaches in planning control were confirmed by the Local Planning Authority (LPA) and to assess and determine whether these breaches would be acceptable or not in planning terms, the new applicant (Mr Smith of Distinction Developments, Barton Seagrave), was invited to submit this Section 73 planning application (as allowed under the Town & Country Planning Act 1990) to vary the approved drawings of KET/2015/0350 to include the identified breaches in planning control. It should be noted that through discussions with the LPA, and in response to some of the concerns raised by local residents, the submitted Drawing Number 17313-01G (received 17th October 2018) shows what is being applied for and does not show what can currently be observed on-site. This submitted drawing includes the suggested amendments which the LPA considered could make the proposal acceptable in planning terms.

Proposed dimensions:

- Maximum length 18.66 metres
- Maximum depth 9.0 metres
- Maximum eaves height 2.475 metres
- Maximum ridge height 5.893 metres

Of the above proposed dimensions all are less than the dimensions previously granted permission, with the exception of the ridge height which is 893 millimetres (0.893 m) higher than that approved by the Inspector in his decision for KET/2012/0541.

Other important proposed changes are:

- Removal of all roof lights currently installed and replacement with 3 high level roof lights on the southern roof slope (facing garden of 97a Rushton Road) and 2 high level roof lights on the northern roof slope (facing garden of 1 Shotwell Mill Lane)
- First floor to contain 2 bedrooms and a bathroom
- Small gabled front porch
- Single storey outbuilding in garden at western end (max. height 3.4 m)
- Single garage 7.6 m (L) x 3.82 m (W) x 4.0 m (H)
 - NB: (Single garage 6.0 m (L) x 3.20 m (W) x 4.0 m (H) approved under KET/2015/0350)
- Single garage located closer to the boundary fence of 97a Rushton Road by approximately 0.6 m
- 4 on-site car parking spaces
- Inclusion of 2 car parking spaces to the front of No.101 for use by the occupiers of No. 101

Any Constraints Affecting the Site

Public right of way (UH13) along the front of the site

4.0 Consultation and Customer Impact

Rothwell Town Council

An objection has been made to the application on the grounds of:

- The ridge height has exceeded 5 m
- Proposed increase in parking spaces from 3 to 8 will increase traffic and adversely affect neighbours
- Original permission for 2 sky lights and 4 solar panels; 9 sky lights have been put in
- Garage has been re-positioned and adversely affects neighbours

Environmental Health

I have no comments on this application

Environmental Care

No comments received

Neighbours

One letter of support has been received from neighbouring property of No.1 Shotwell Mill Lane. The consultation response cited the following reasons:

- Our property is next door to the development and is in our line of sight more than any of our neighbours.
- Bungalow and garage are visible from all our rear rooms and rear garden and have no objection to present construction and position of house and garage.
- We have no objection to additional height, garage position, additional room and outbuilding.
- The position [as existing] of the roof lights has no impact on our privacy or that of nearby neighbours.

Four letters of objection have been received from neighbouring properties of Nos. 97, 97a, 99 & 101 Rushton Road. The consultation responses objected on the following grounds:

- Builder made the decision to increase height in contravention to original planning permission to increase his profit
- We [of 101 Rushton Road] fought to only build a small house on site
- Builder mislead LPA by claiming increase in height was due to error in roof trusses size
- Due to health reasons we were not able to report increase in height earlier – if so the LPA would have stopped it earlier
- Private covenant exists between builder and No. 101 requiring development to be built in accord with KET/2015/0350
- Inspector's decision of KET/2012/0541 set dimensional parameters to build to
- Our pre-application advice with the LPA refers to dimensional parameters
- Current building is 1.093 m higher than permitted proposal
- Garage has been built larger and closer to neighbours
- Outbuilding has no planning permission
- Permanently overlooked by the development
- Shared drive not completed
- Parking spaces for No.101 not close to completion
- Proposal is not close to No.1 Shotwell Mill Lane
- Covenants are in place protect No.1 Shotwell Mill Lane from ever being overlooked by developments
- Proposed dimensions are virtually unchanged from those granted by KET/2015/0350 – with exception of height increasing from 4.8 m to 5.893 m
- Proposal would have an adverse impact on visual amenity and character of the locality
- Appeal Decision (18 Nov 13) stated height of 5 m would ensure impact on outlook of adjacent residents would be minimal
- [No.99] – visual impact of two-storey dwelling and garage does not ensure impact on our outlook is minimal
- Overlooking, loss of privacy, loss of outlook
- Development not in accordance with conditions of last planning permission and Inspector's Appeal Decision
- 8 car parking spaces
- Prominent, obtrusive and conspicuous appearance
- Increase to 4/5 bedrooms allows intensification causing additional noise and disturbance
- Increase in traffic – amenity disturbance and highway safety concerns
- Varying height (1.8 m to 2.4 m) of close boarded timber fence creates a compound or enclosure impression
- Current building on site has taken place without permission – therefore the Council should not give approval

5.0 Planning Policy

National Planning Policy Framework (NPPF) (2018):

- Policy 1: Introduction
- Policy 2: Achieving sustainable development
- Policy 4: Decision-making
- Policy 5: Delivering a sufficient supply of homes
- Policy 9: Promoting sustainable transport
- Policy 12: Achieving well-designed places

Development Plan Policies

North Northamptonshire Joint Core Strategy (JCS):

- Policy 1: Presumption in Favour of Sustainable Development
- Policy 8: North Northamptonshire Place Shaping Principles
- Policy 9: Sustainable Buildings
- Policy 11: The Network of Urban and Rural Areas
- Policy 29: Distribution of New Homes
- Policy 30: Housing Mix & Tenure

Local Plan

- Policy 35. Housing: Within Towns

SPGs

- Sustainable Design

6.0 Financial/Resource Implications

None

7.0 Planning Considerations

The key issues for consideration in this application are:-

1. The Principle of Development
2. Character and Appearance of the Area
3. Residential Amenity
4. Parking and Highway Safety
5. Other Issues raised

1. The Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to determine planning applications in accordance with their Development Plans unless material planning considerations indicate otherwise

The application site is in an established residential area within the settlement boundary of Rothwell. Policy 11 of the North Northamptonshire Joint Core Strategy is supportive of residential development that is located within the Urban Areas, where Rothwell is defined as a Market Town.

The principle of development for this proposal is established as it is within a defined built-up Urban Area and by virtue that earlier decisions granted residential development for a single dwelling at this location.

2. Character and Appearance of the Area

Policy 8(d) of the North Northamptonshire Joint Core Strategy requires new development to reflect, respect and enhance the character of its surroundings.

A material consideration in this case is the Inspector's decision of 18 November 2013 concerning KET/2012/0541. It is evident that of the objection comments received, one of the main concerns is that the increase in height would be detrimental and harmful to the character and appearance of the area. In contrast one local resident supports the proposal and has no objection to the increase in height.

In the above Inspector's decision he noted that his decision is based upon the set of scale parameters that were originally included in the outline planning application. This is not to say that had the applicant submitted a set of scale parameters with KET/2012/0541 that were of the same as what is proposed in this KET/2018/0564 application whether he may or may not have considered them to also have been acceptable. Whilst the Inspector's decision is a material consideration, it does not prevent the LPA from being able to consider a slightly larger proposal and whether it would or would not harm the character and appearance of the area.

The Inspector concluded that due to the height and scale, as identified in the scale parameters, the building would not be unduly prominent in the street scene and would not result in any particular harm to the character of the area. The scale parameters were:

- Maximum length 19 metres
- Maximum depth 10 metres
- Maximum eaves height 3 metres
- Maximum ridge height 5 metres

As commented on above, the eaves and footprint of this, KET/2018/0564, proposal do not exceed the scale parameters above. It is accepted that the proposed height at 5.893 m, is 0.893 m higher than the 5.0 m considered by the Inspector. It is further accepted, that the KET/2015/0350 decision permitted a final ridge height to 4.8 m. As a consequence, the proposal as currently built on-site has resulted in a larger expanse of roof as in order to keep within the maximum eaves height parameter the pitch of the roof has increased so as to attain the increase in height subject of this application.

The character of the surrounding area is of generous, largely undeveloped, rear gardens with an eclectic mix of frontages along Rushton Road defined by large, primarily detached properties set in large plots fronting onto the public highway. A variety of construction material and designs are present. Although, some of the openness currently associated with the area has been lost through this development it is opined that the footprint of the dwelling has taken up a relatively small proportion of the site, with the remainder being retained mainly as garden space. The dwelling has been set away from the perimeter of the site so as to assist in maintaining the open, green character of the area.

Viewing the site from the public vantage points along Rushton Road there are only very limited points where the upper most part of the roof is visible through gaps between buildings and existing vegetation. Even with the increase in height from 5.0 m, as conditioned by the Inspector, to 5.893 m it is opined that the dwelling would not be overly prominent within the street scene and consequently the character of the area would not be significantly harmed.

For the above reasons it is opined that the character and appearance of the area would not be harmed by the proposal and that the proposal is in compliance with Policy 8 (d) of the North Northamptonshire Joint Core Strategy.

3. Residential Amenity

Policy 12 (paragraph 127) of the NPPF states that development must secure a good standard of amenity for all existing and future occupants of land and buildings.

Policy 8 (e) of the JCS is clear that development must not result in an unacceptable impact on the amenities of neighbouring properties or the wider area, by reason of noise, vibration, smell, light or other pollution, loss of light, overbearing or overlooking.

At the closest point the almost complete dwellinghouse is some 35 m away from the rear elevations of Nos. 99 & 101 Rushton Road. By contrast No.1 Shotwell Mill Lane and 97a have rear garden depths of approximately 60 and 65 m respectively.

It is accepted that the low level roof lights in the slope facing No.97a's rear garden would give rise to a loss of privacy to the occupiers when they use the far end of their garden, as these roof lights would serve bedrooms and are at a height permitting direct views from the bedrooms into the garden area. To address this an amended plan was submitted to demonstrate that all these roof lights would be removed and replaced with 3 roof lights where there are all set high in the roof such that their bottom cill heights are at 1.7 m above finished internal floor level to prevent the future occupiers from being able look out and down into No.97a's garden.

Concerns were raised that the increase in height of the roof and its massing has a harmful effect on the visual amenities and light of the neighbouring occupiers. As commented on above the dwelling is located away from the new boundaries and is at least 35 m away from nearest elevation of the surrounding residential properties, where there are intervening outbuildings, mature vegetation and boundary fences between proposal dwelling and the neighbouring dwellings. Even though the ridge of the roof is 0.893 m higher than the scale parameters considered by the Inspector, it is considered that this relatively small increase would have a limited impact upon the neighbour's amenities and, therefore, this would not be of a scale to warrant refusing the application.

With regard to the boundary treatment (currently a close boarded timber fence) running along the application site and No.101 Rushton Road it is stated to be 1.8 m in height (see Plan No. 17313-01g received 17 October 2018) which is the same height as approved under Planning Permission KET/2015/0350 (see Plan No. 100/B received 24th June 2015). Whilst both proposals indicate that a section (not clearly defined) running west to east along the access track is to be brick, the entire length

of the boundary is currently close boarded timber. Close boarded timber fencing is opined to be a common choice for residential properties and is considered to be acceptable in this location.

During discussions with the occupier of No.97a, to further allay their concerns of loss of privacy from the rear ground floor windows of the development, it was agreed that this section of the fence be raised to 2.4 m.

The occupiers of No.101 have raised concerns about noise of additional traffic movements. The proposal is increasing the number of bedrooms from 3 to 4. As it is expected that the future occupiers would be living as a single household then the possible increase in residential traffic is opined to be at a level not significantly worse than that arising from the consented 3-bedroom proposal. However, a condition shall be imposed requiring the private access road to be hardbound so as to mitigate noise arising from vehicles coming and going from the proposed development.

For the above reasons it is opined that the amenities of neighbours would not be significantly harmed by the proposal and that the proposal is in compliance with Policy 8 (e) of the North Northamptonshire Joint Core Strategy.

4. Parking and Highway Safety

Policy 8(b) of the North Northamptonshire Joint Core Strategy requires new development to have a satisfactory means of access, provide for parking, servicing and manoeuvring to adopted standards, and not to have an adverse impact on the highway network nor prejudice highway safety.

Concerns were raised regarding the increase in traffic associated with the increase in the number of bedrooms to be provided and the increased on-site parking provision shown on the submitted plans. The earlier KET/2015/0350 approval was for a single storey 3-bedroom dwellinghouse. According to the Local Highway Authority's (LHA) parking standards, 2 car parking spaces and 1 visitor space would be required. This application to retrospectively vary the proposal to a one-and-a-half storey 4-bedroom dwellinghouse would require 3 spaces plus 1 visitor space according to the LHA standards. Consequently, 1 additional space is required and has been provided. Submitted amended drawings to demonstrate 4 parking spaces plus the garage are to be provided as opposed to the 8 spaces as originally proposed.

Comments concerning the number of spaces that could be provided on-site due to the size of the site's curtilage are in excess of the required 3 plus 1 space, and that this would lead to a significant increase in residential traffic along the access to the side of No.101 are noted. Whilst the likelihood that the current proposal could be used more as a family home with driving-age dependants, as opposed to the KET/2015/0350 proposal having the likelihood to be used as 'retired' persons home with no driving-age dependants, thereby implying a 4-bed dwellinghouse would significantly increase the number cars associated with it and the resultant residential traffic over that associated with a 3-bed dwellinghouse, it would not be reasonable to use a planning condition to restrict how many cars the occupiers of either dwellinghouse could have. It is accepted that this proposal has the potential for

more cars to be associated with it than the 3-bed proposal, but by applying the LHA's adopted standards then it reasonable to conclude only one extra car is probable as it is opined that the LHA's standards are based upon averaged-out data for the most probable number of cars, and therefore spaces, that a 4-bedroom dwelling would produce/require.

Regarding the parking provision to the front of 101 Rushton Road, a condition shall be imposed requiring this to be laid-out and hardbound prior to the first occupation of the new dwelling.

For the above reasons it is opined that highway safety would not be compromised and that the proposal is in compliance with Policy 8 (b) of the North Northamptonshire Joint Core Strategy.

5. Other Issues raised

The occupiers of No. 101 Rushton Road have repeatedly made representations that when they sold the development site to the applicant they entered into a private covenant requiring that the new dwelling be built to the scale parameters (which are believed to include a maximum ridge height to 5 m) and that such a private covenant has a bearing on any planning decision made. Unfortunately, the decision-maker can only take into account material planning considerations. Covenants are not material planning considerations, as they are private matters between the two parties for them to resolve outside of the planning system.

The intentions of the applicant, e.g. disregarding approved drawings to allegedly increase their profits, are again not material planning considerations. Every planning application is considered on the planning merits relevant to it, and not upon an individual's intentions.

To conclude that planning permission cannot be considered or granted retrospectively on developments where they have not been built in accordance with earlier approved drawings or planning conditions is not an automatic position an LPA can entertain because sections 73 & 73A of the Town Country Planning Act 1990 (as amended) were introduced to allow applicants a legal route to either amend the design of an approved development or to regularise a situation where a development has not been carried out in accordance with planning permission granted or complying with some condition. It should be noted that this s73/s73A route does not imply that planning permission should be granted, as the LPA must first consider and assess any application and then decide whether to refuse or grant planning permission. In this case, and for the reasons set out above, the approval of planning permission is recommended.

Conclusion

The proposal is considered to be acceptable in terms of amenity, design and parking issues and is recommended for approval subject to the conditions stated.

Background Papers

Title of Document:

Date:

Contact Officer:

Alan Chapman, Development Officer on 01536 534316

Previous Reports/Minutes

Ref:

Date: