

Appeal Decision

Site visit made on 14 September 2016

by Mr C J Tivey BSc (Hons) BPI MRTPI

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

Decision date: 27 September 2016

Appeal Ref: APP/U3935/W/16/3153393

Land to the rear of 2 Kennet Avenue, Swindon SN25 3LG

- 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 Elliston against the decision of Swindon Borough Council.
 - The application Ref S/16/0601/JROD, dated 4 April 2016, was refused by notice dated 24 May 2016.
 - The development proposed is for the erection of a bungalow and detached garage.
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Decision

1. I dismiss the appeal.

Procedural Matter

2. I note the Council's query over the description of the development as it has accommodation at first floor level proposed. As far as I can see from the submitted drawings, the dwelling has the appearance of a bungalow; and what is critical is that the plans before me are a true representation of the development proposed. In any case, for the purposes of the Planning Act, a bungalow is a dwelling and, therefore, I have retained the description as set out within the application form, and have determined the appeal on this basis.

Main Issues

3. The main issues raised within the Council's decision notice are the impact of the proposal upon the character and appearance of the area; and upon highway safety.

Reasons

Character and Appearance

4. The appeal site is situated to the rear of 2 Kennet Avenue which is located at the end of a cul-de-sac and within a road of predominantly detached dwellings. A footpath runs along the north western boundary leading to a street-lit single track tarmac lane which also has a Public Right of Way running along it. A number of properties back onto this lane, some of which have rear vehicular access therefrom. In addition 152a Whitworth Road diagonally opposite and to the north west of the site is solely accessed from here and, in itself, is a quite substantial detached bungalow.
5. The proposal would see the retention of the existing double garage for the proposed dwelling and the erection of a new garage to its rear (north east) to serve the host dwelling, with access from the latter gained via an established driveway off Kennet

Avenue. The new dwelling would be located in the approximate location of an existing outbuilding (to be demolished) that is currently used by the occupants of no 2 as a workshop and leisure building. This is of a quite substantial scale and currently runs from the south western corner of the appeal site hard up against the edge of the lane for approximately half the length of the western side boundary. The proposed dwelling would be set back from both the south and western boundaries, although its overall footprint would be approximately double that of the existing outbuilding. Between both existing buildings is a driveway which runs from a gateway providing rear vehicular access into the site, currently serving the host dwelling.

6. The prevailing pattern of development within the locality is predominantly of detached dwellings set on generous plots, although this is not exclusively so. For example, the aforementioned no 152a and the more densely laid out terraced dwellings situated within Larchmore Close, all take up more of their respective sites.
7. As highlighted by the Council, the existing curtilage to no 2 is larger than its neighbours. They state that it is not acceptable for a dwelling to be located within a residential garden of an existing dwelling, but that is not what the National Planning Policy Framework (the "Framework") stipulates. It is true that the Framework excludes private residential gardens within built-up areas from the definition of previously developed land, but as with all planning proposals, regard has to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts; and the determination must be made in accordance with the Plan unless material considerations indicate otherwise¹.
8. Paragraph 53 of the Framework states that Local Planning Authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example, where development would cause harm to the local area. It does not however categorically state that residential development in rear gardens is unacceptable as a matter of principle. Taking into account the rather varied pattern of development within the locality, I cannot agree that the plot size, orientation, access and amenity space proposed within the scheme are uncharacteristic of the area.
9. I note that the Council's Backland and Infill Development Supplementary Planning Document (SPD) predates the issue of the Framework, it is based upon the now superseded Planning Policy Statement 3, as well as Policy DS6 of the Swindon Borough Local Plan (2011) which no longer forms part of the Development Plan, therefore I can only give it limited weight. Notwithstanding this, the SPD does not prohibit backland development, but seeks to ensure that such development makes a positive contribution to local character and protects and enhances the appearance and amenity of existing residential areas.
10. I accept that the proposed development would reduce the garden size of no 2. However, taking into account the fact that the existing plot is larger than the majority within the area, and that I have been provided with no quantitative assessment of garden sizes within the locality, I have no substantive reason to believe that the areas of private amenity space to serve both the existing dwelling and that proposed would be substandard. I also note that the Council states that the dwelling at 152a Whitworth Road would have been approved under different local and National Planning Policies, but this could well be a typographical error?

¹ Section 38 (6) Planning and Compulsory Purchase Act 2004.

11. The Council stipulates that the separation distance between habitable rooms of the proposed bungalow and no 2 is below the 22m standard as set out within the SPD. However, this is not found within the reasons for refusal, and taking into account the installation of adequate boundary treatments, I consider a mutual loss of privacy to the existing and future occupants of either dwellings would not be material.
12. On this matter I conclude that the proposal would not have a detrimental impact upon the character and appearance of the area and complies with Policies DE1 and SD1 of the Swindon Borough Local Plan 2026 (2015) which require high standards of design for all types of development; seek to ensure that proposals are assessed against a number of design principles, including the context and character of existing built characteristics. I also find that the proposal is broadly in accordance with one of the core planning principles of the Framework which is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Highway Safety

13. As highlighted above, the appeal site is accessed via a single-track tarmac lane which has a Public Footpath running along its length. This connects Whitworth Road in the south to the appeal site, no 152a, as well as providing secondary rear access for a number of other properties. It also connects through to Kennet Avenue and Larchmore Close. Therefore, it is quite clear that vehicles do use this route, but it is lightly trafficked and, indeed at the time of my site visit, no vehicles used this route.
14. I note that the Local Highway Authority (LHA) states that the site provides sufficient and requisite viable off-road parking provision and acceptable turning space, with the proposed garaging meeting the Council's recommended standard dimensions. However, the access into the appeal site is currently a secondary access, with no 2 also having a driveway and access off the cul-de-sac which it fronts. It is highly likely that vehicle movements to and from the proposed dwelling would be higher than the existing situation, as it would be serving an additional dwelling, whereas the occupants of no 2 currently have the ability to use either access.
15. I note that the LHA state that the footpath is located in private third party ownership, was not created with vehicular use in mind, and that they only have a duty to maintain the path and its surfacing as a Public Highway solely for pedestrians. Indeed, whilst a vehicle can physically travel along the lane with the consent of the land owner, this does not infer that it is suitable or that it supersedes the designation or priority of safety of pedestrians using the footpath.
16. The footpath is approximately 126m in length and whilst relatively wide at its junction with Whitworth Road narrows down to a width of approximately 3m for a length of some 45m. Taking into account the cited average car width and the minimum widths required for pedestrians, wheelchair users and for mobility scooters, approximately one third of this route at least is not wide enough to allow these users to pass safely at the same time, due to a lack of safe passing places and the inability to provide a designated pedestrian route.
17. I can only conclude that an intensification of vehicular use would likely give rise to the increase in potential conflicts between vehicles and pedestrians. Further, the LHA also highlight the inadequate width for the servicing of the site by either waste collection or emergency vehicles and I have not been provided with any evidence to counter this.

18. I acknowledge that the workshop to be demolished previously had a commercial use, but this is historic and in recent times has only been used as incidental accommodation to no 2. It is quite clear from the LHA's submissions that the lane is not adopted as a Public vehicular highway, notwithstanding the fact that it is provided with street lighting and is used by a limited number of vehicles. I have no reason to doubt that the site is in a sustainable location in terms of public transport accessibility and, as I have found above, there is no objection either to the principle of the residential development on the appeal site or any detrimental impacts upon the character and appearance of the area. However, these matters do not outweigh the harm that I have found that stem from the proposal in respect of matters of highway safety.
19. I recognise that the appellant considers that the granting of planning permission in 1993 for no 152a sets a precedent for the proposal before me, however, each case must be assessed on its own merits. For the reasons given above I cannot agree that the proposed dwelling would not increase the volume of vehicle movements that are made along the lane. Whilst I acknowledge that the donor dwelling can currently be accessed from the rear, the proposal which includes the erection of a new garage to its west, signifies the appellant's intention to provide sole access to no 2 from the Kennet Avenue/Severn Avenue turning head.
20. Consequently, I find that the proposal would give rise to greater dangers to highway safety and is contrary to Policy TR2 of the Swindon Borough Local Plan, in that development is only permitted where proposals provide access that is appropriate to the scale, type and location, without detriment to highway safety, and where there is an existing safe and convenient pedestrian/cycle access or provision made for such access (criterion b).

Conclusion

21. I have concluded that the proposal is acceptable in principle and would not have an adverse effect upon the character and appearance of the area. I also agree that the site is in a sustainable location and would go some way, albeit limited, in supplementing the housing land supply for the Council. However, these matters are not outweighed by the harm that the proposal would cause to highway safety and specifically the potential for conflict between vehicles driving to and from the appeal site and pedestrians.
22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

C J Tivey

INSPECTOR