
Appeal Decisions

Site visit made on 18 October 2016

by Stephen Hawkins MA MRTPI

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

Decision date: 9th November 2016

Appeal Ref: APP/U3935/W/16/3143619

The Gables, Bath Road, Old Town, Swindon, Wiltshire SN1 4AY

- 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 Mrs M Byrne against the decision of Swindon Borough Council.
 - The application Ref S/15/1279/HECO, dated 31 July 2015, was refused by notice dated 18 December 2015.
 - The development proposed is construction of a new vehicular access and drive.
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Appeal Ref: APP/U3935/W/16/3153430

The Gables, Bath Road, Old Town, Swindon, Wiltshire SN1 4AY

- 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 Mrs M Byrne against the decision of Swindon Borough Council.
 - The application Ref S/16/0188/HECO, dated 1 February 2016, was refused by notice dated 28 April 2016.
 - The development proposed was originally described on the application form as erection of four new dwellings.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. The plans submitted with the application in respect of Appeal A differ significantly from the wall as built. In particular, the wall shown on the submitted plans is substantially lower, but with higher piers at either end. It also does not have a central pedestrian entrance flanked by piers. The appellant has suggested that I should consider the proposal on the basis of the wall as built and has invited me to attach conditions, including a condition requiring a central pedestrian entrance. I note that the Council described the application as 'retrospective' on the decision notice. Whilst I could attach conditions if I were minded to allow the appeal and grant planning permission, the development would then be materially different to that considered by the Council. Therefore, in the interests of fairness and for the avoidance of doubt, I have dealt with the appeal on the basis of the plans submitted with the application.
 4. Whilst the appellant has questioned the need for planning permission in respect of some aspects of Appeal A, that is not a matter for me to determine in the
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context of an appeal made under Section 78 of the Town and Country Planning Act 1990. It is open to the appellant to have the matter determined under sections 191 or 192 of the Act. Any such application would be unaffected by my determination of this appeal.

5. Notwithstanding how it was described on the application form, revised plans were received by the Council in respect of Appeal B, which reduced the number of proposed dwellings to two. The Council considered the application on that basis and I shall do the same in respect of the appeal.
6. Since the Council refused planning permission, the Backland and Infill Development Supplementary Planning Document (SPD) referred to in the reasons for refusing planning permission has been superseded, as a result of the Council's adoption of the Swindon Residential Design Guide SPD. Therefore, I have only referred to the recently adopted SPD in my decision.
7. In its statement on Appeal B, the Council says that the additional information supplied by the appellant concerning the effect of the proposed dwellings on the three Lime trees on the appeal site, has overcome its fourth reason for refusal, subject to the imposition of a suitably worded condition to ensure that the works are undertaken in accordance with the submitted details. As this matter is no longer in dispute between the main parties, I have not dealt with it in my decision.

Main Issues

8. The main issue in respect of Appeal A is whether the proposal preserves or enhances the character or appearance of the Town Gardens Conservation Area.
9. The main issues in respect of Appeal B are:
 - Whether the proposal preserves or enhances the character or appearance of the Town Gardens Conservation Area.
 - Whether the proposal would provide a suitable living environment for future occupiers, having regard to the vehicular and pedestrian access arrangements.
 - Whether the proposal would provide a safe and suitable access for all people, having regard to the access arrangements.

Reasons

10. 'The Gables' is a substantial detached stone-built three storey Victorian villa, which I am given to understand is currently used as a guest house and hairdressers' salon. It has a deep rear garden area, mainly used for informal parking. The parking area is accessed off a service road running between the backs of properties on Bath Road and Lansdown Road.
11. The villa and the adjacent properties along Bath Road are within the Town Gardens Conservation Area (CA), which extends to include residential areas of Victorian and Edwardian housing. With a few more modern and large scale exceptions, including 66-68 Bath Road next door, the majority of the buildings along this part of Bath Road are mostly large and often individually designed villas, situated in substantial plots.

Appeal A

Character and appearance of the Conservation Area

12. The appeal site comprises the front garden of the villa. I am given to understand that a low stone wall topped by a low metal railing previously formed most of the boundary with the footway on Bath Road. The wall had a central pedestrian entrance flanked by taller stone piers aligned with the front door of the villa. A second, slightly wider, opening in the wall was adjacent to the boundary with 62 Bath Road. Thus even though it was of limited overall height, the boundary provided a strong sense of enclosure at the front of the villa. Together with its well-defined, central entrance, it contributed positively to the setting of the villa. Prior to demolition of the boundary, the principal vehicular access and parking area of the villa would have been at the rear.
13. There are instances in the CA along Bath Road of vehicular driveways and parking areas in front gardens, where part or all of the front boundary has been removed. However, on the whole the front gardens of properties are still defined by low stone or occasionally brick walls, in a variety of designs, often backed by mature garden planting. The positive contribution of these front boundaries to the character and appearance of Bath Road as well the historic significance of the villa as one of the original detached dwellings from the 19th Century town expansion, is recognised in the Council's Conservation Area Appraisal and Management Plan (CAAMP).
14. The proposal would provide a vehicular entrance approximately three metres wide to the front garden on one side, with an exit point of similar width on the other side. The cumulative width of both openings would be around double that of the openings in the now demolished front boundary. A new low stone wall with a stone pier at either end using existing materials would fill the remaining space between the two drives. However, the overall length of stone wall along the frontage would still be substantially reduced, compared with the previous boundary. This would open up the frontage, reduce the existing sense of enclosure at the front of the villa and in combination with the associated hardsurfacing of the driveways, it would create a more urbanised, car-led appearance. Moreover, the proposal would not replicate the central pedestrian entrance and flanking piers of the demolished wall and its relationship with the front elevation of the villa.
15. I acknowledge that the appeal site did not previously contain formal planting, the front garden was already largely hardsurfaced and the proposal would still result in around two thirds of the front garden being defined by a boundary wall. The appellant suggests that the proportion of the new wall to the open frontage would not be dissimilar to the average proportions of walls and openings in the frontages along both sides of this part of Bath Road. Whilst that might be the case, my impression was that the gaps in the front boundary which would be created by the new drives would be noticeably wider than that typical of gaps in frontages in the locality. Whilst there may be less planting on this side of Bath Road, it does not necessarily follow that the appeal site can accommodate the loss of a substantial section of the front boundary without harming the character and appearance of the area.
16. According to the appellant, the demolished wall and railings were relatively modern, dating from the 1970's. Nevertheless, from the material I have been provided I find that the proposal would represent a significant erosion of the

substantial visual contribution that the demolished boundary wall and railings made to the setting of the villa and to the wider street scene along Bath Road. Similar conclusions regarding the removal of the front boundary were reached by another Inspector in February 1993 dealing with previous appeals at the site¹. From the evidence I have been provided with, there has not been any material change in the circumstances in the intervening period that would lead towards a different conclusion.

17. Consequently, I find that the proposal would fail to preserve or enhance the character or appearance of the CA. Therefore, it would not accord with Policy EN10 criterion (a), (b) and (e) of the adopted Swindon Borough Local Plan 2026 (LP), because it would not sustain and enhance the Borough's historic environment, it would not conserve and enhance the significance and setting of the CA and it would not conserve those elements which contribute to its special character and appearance. Further, the proposal would not accord with LP Policy DE1 criterion (a) and (b), because it would not have a high standard of design when assessed the against the design principles of context and character, in respect of existing built characteristics, acknowledged features of importance and existing site conditions, and when assessed against the design principles of the layout, form and function of the development, in respect of scale, materials and detailing.

Other matters

18. The Council did not have any objection on highway safety grounds. I have not found any reason why I should come to a different decision in that respect.

Planning Balance

19. The harm to the significance of the CA caused by the proposal would be 'less than substantial' as meant by Paragraph 134 of the National Planning Policy Framework (the Framework). The benefit of more convenient access arrangements for users and visitors to the villa and the lack of any material harm to highway safety arising from the proposal are acknowledged. However, there is a substantial parking area available at the rear of the villa, which presumably most visitors would otherwise use. The rear parking area does not have obvious significant difficulties in terms of its ease of access and it would therefore not appear to provide any significant disincentive to persons intending to visit the property. Bath Road has waiting restrictions on both sides of the carriageway in the vicinity of the appeal site. Therefore, it would not be unreasonable to assume that most service vehicles visiting the villa would use the rear parking area and would not be stopping on Bath Road for significant periods. As a result, visitors to the villa should not be significantly inconveniencing other road users.
20. Consequently, the proposal would not have any significantly positive effect, in terms of sustaining the existing economic uses of the villa. Overall therefore, I find that the benefits arising from the proposal would be largely private and in favour of the appellant. Any public benefits would be small scale and they would not outweigh the harm to the significance of the CA.

¹ References T/APP/X3920/A/92/216753/P5 & T/APP/X3920/E/92/809531/P5.

Appeal B

Character and appearance of the Conservation Area

21. The long rear garden of the villa is largely open, a characteristic it shares with the substantial rear gardens of the adjoining and nearby properties in this part of the CA. The important contribution made by private gardens to the character of the CA is recognised in the CAAMP. Where outbuildings are present in rear gardens, in most cases they are located at the far end, adjacent to the service road. I viewed several of these outbuildings, some of which are depicted in the details supplied by the appellant. Whilst some are large and appear to have upper levels within the roof space, mostly the outbuildings are of modest height and overall scale and they have a simple, functional appearance. This reflects the ancillary relationship that the majority of the outbuildings have with the much larger scale of the host buildings fronting onto Bath Road. To the north of the service road beyond the CA lies the denser, more urban grain of the terraced properties along Lansdown Road.
22. The proposed dwellings would be located towards the northern end of the appeal site, with one dwelling sited behind the other linked by garage/carports, alongside a shared private access also serving the villa. The siting of unit 1 at a right angle to the service road and the appearance of its end gable would reflect the appearance and the proportions of built-up frontage of some of the nearby outbuildings along the service road. The appeal scheme followed the refusal of planning permission by the Council of a previous scheme for four, two bedroom flats², in which the Council did not object to the principle of developing the appeal site.
23. Nevertheless, each of the proposed dwellings would be arranged over two storeys accommodating three bedrooms. This would give them a substantial overall height and bulk. They would therefore be noticeably larger in terms of their proportions and overall scale compared to most of the outbuildings along the service road. As a result, the proposed dwellings would fail to respect the generally subordinate relationship between the outbuildings along the service road and the host buildings fronting Bath Road. Consequently, the proposed dwellings would therefore appear as an unduly assertive form of development in their surroundings.
24. The design of the proposed dwellings, in particular the mix of materials, their articulated forms and the variations in roof shape, would not reflect the simple lines and more functional appearance of the adjoining and nearby ancillary outbuildings. The design would therefore further emphasise the alien appearance of the proposed dwellings in relation to the adjacent and nearby development in the service road street scene. Whilst I acknowledge the CAAMP does not specifically describe the service road in terms of its making a positive contribution to the CA, I do not read this as suggesting that the service road could therefore accommodate dwellings of the scale and design proposed without causing harm.
25. Further, the coverage of a substantial part of the large rear garden of the villa with built form would significantly erode its open and spacious qualities. It would therefore give the garden a more built-up and urbanised appearance. This would be entirely at odds with the mainly undeveloped and spacious

² Council reference 15/01281/HECO dated 24 September 2015

characteristics of the substantial rear gardens of adjoining and nearby properties in the locality and would contribute to a further diminution in the character and appearance of this part of the CA.

26. Accordingly, I find that the proposed dwellings would fail to preserve or enhance the character or appearance of the CA. As a result, they would not accord with LP Policy DE1 criterion at (a) and (b), because they would not have a high standard of design, when assessed against the design principles of context and character, in respect of existing built characteristics, acknowledged features of importance and existing site conditions, and when assessed against the design principles of the layout, form and function of the development, in respect of their siting, scale, materials and detailing.
27. The proposed dwellings would also not accord with LP Policy HA1, as they would not respect the character of the surrounding area. Further, the proposed dwellings would not accord with LP Policy EN10 criterion at (a), (b) and (e), as they would not sustain and enhance the Borough's historic environment, they would not conserve the significance of the heritage asset or the elements that contribute to the special character or appearance of the CA.
28. Furthermore, the proposed dwellings would not pay sufficient regard to the advice in the SPD at sections 2 and 4. This is because they would not demonstrate how the existing built features have informed their design and they do not respond to and reflect the inherent scale, density, massing, height, layout and materials of the existing area. They would not reflect the inherent plot size, building line, roofscape, built form, scale, massing and details. Further, they would not respect established building lines and reinforce existing street character, they would not be orientated to ensure that their public frontage faces the dominant street, they would not provide surveillance over the public realm, they would not be in scale with their context and character and complimentary to the street scene and the massing would not contribute positively to the surrounding streets.
29. Therefore, the proposed dwellings would also not accord with the Framework core planning principles of seeking to secure high quality design and conserving heritage assets in a manner appropriate to their significance at paragraph 17, section 7 concerning the requirement for good design and section 12 concerning conserving and enhancing the historic environment.

Living conditions

30. The service road leading to the appeal site mainly provides access to ancillary outbuildings at the rear of properties on Bath Road and Lansdown Road. It has a reasonable quality metalled surface but it is narrow in parts, lacks separate footways and it has no street lighting. Moreover, it is largely enclosed by walls, gates and outbuildings, meaning that there is little natural surveillance. These qualities mean that the service road does not provide a particularly attractive route for pedestrians, or one that is perceived as being particularly safe. This is likely to create a disincentive for pedestrians to use the route during the day which is exacerbated during the hours of darkness.
31. The future occupiers of the proposed dwellings would nevertheless be reliant on the service road as the sole means of pedestrian and vehicular access to their properties. Due to the constraints identified above, this would create the perception of an unsafe and potentially threatening environment which would

be experienced by the future occupiers and their visitors when travelling to and from the proposed dwellings and it would therefore reduce their perception of their homes as being safe and secure. There would be windows in elevations of the proposed dwellings looking towards the service road, but these would only provide limited and localised surveillance.

32. Whilst the future occupiers of the proposed dwellings may be able to choose whether to travel on foot, the above would effectively reduce their ability to feel that they have a real choice of alternative means of transport to the private car. Although existing local residents may use the service road, it is unlikely to provide the sole access to their properties. They therefore have much more of a choice as to whether to use the service road, depending on the time of day. Moreover, whilst the relationship between the proposed dwellings and the service road might be comparable with some other housing in the Borough, that would not be a good reason in itself for providing a poor quality living environment.
33. Therefore, the proposed dwellings would not accord with LP Policy DE1 criterion at (b), when assessed against the design principles of the form and function of the development, in respect of safety and security. Moreover, the proposed dwellings would pay insufficient regard to the advice in the SPD at sections 2 and 3, as the development would not feel safe and secure, it would not promote a walkable neighbourhood, the route would not be well lit and there would not be active, animated elevations to provide surveillance. Consequently, the proposed dwellings would not provide a good standard of amenity for the future occupiers and they would therefore be inconsistent with one of the Framework core planning principles at paragraph 17 in that respect.

Whether safe and suitable access would be provided

34. As noted above, the service road is utilised by a number of other properties. However, the proposed dwellings would introduce a substantial number of additional vehicular and pedestrian movements, including comings and goings by the future occupiers as well as service vehicles such as refuse and recycling collections, deliveries and, on occasion, emergency vehicles.
35. The width of the service road might allow some smaller vehicles to pass one another with care. However, given its other significant constraints in terms of the lack of separate footways or street lighting, the additional traffic movements arising from the proposed dwellings would result in a substantial and unacceptable erosion of standards of highway safety along the service road. Although most traffic along the service road might be travelling in a similar direction at peak times, in my view this would not, in itself, be a reliable means of ensuring safe highway conditions.
36. I have been referred to the Council's recent grant of planning permission for fifteen units served by the same service road at No 66-68 next door³. However, from the information I have been supplied with there are material differences between the approved development and the appeal scheme. In particular, the approved development is largely focussed on the residential re-use of an existing large-scale building formerly in communal use. There are no separate units being erected within the grounds. It is also apparent from the plan supplied by the appellant that the bin storage arrangements for the

³ Council reference S/15/1206/TB dated 13 November 2015

approved development are located at the front of the property on Bath Road. Consequently, the approved development would mostly be serviced from Bath Road, compared to the appeal site where the service road would be the sole access. As a result, I am not persuaded that the Council has been inconsistent to its approach to highway safety at No 66-68 compared with the appeal scheme.

37. Therefore, the proposed dwellings would not accord with criterion in LP Policy DE1 at (b), when assessed against the design principles of layout, form and function in respect of accessibility, connectivity and safety and security. They would also not accord with LP Policy TR2, as the access would cause detriment to highway safety. Moreover, as the proposed dwellings would not achieve a safe and suitable access for all people they would therefore be inconsistent with the Framework at paragraph 32.

Other matters

38. The Council has not objected to the proposed dwellings on grounds of unacceptable harm to the privacy of the occupiers of adjoining residential properties. I have not found any reason why I should reach any different conclusions to those of the Council in that respect.

Planning Balance

39. The appellant has made reference to the Council not currently having a five-year supply of housing land. There has been no evidence to the contrary from the Council in that respect. Therefore, on the basis of the evidence I have before me, the Council's policies for the supply of housing should not be considered up-to-date in accordance with paragraph 49 of the Framework and the presumption in favour of development in paragraph 14 is engaged.
40. I accept that the proposed dwellings would encourage the effective re-use of land and that the appeal site is sustainably located in relation to facilities and services, being consistent in those respects with core planning principles at paragraph 17 of the Framework. Nevertheless, in order to be consistent with the objectives of sustainable development, the proposed dwellings would have to perform the three mutually dependent roles- economic, social and environmental-set out at paragraph 7 of the Framework. The proposed dwellings would fulfil the economic role and part of the social role. They would provide employment, in particular in the short term in the construction sector. They would assist in sustaining local shops and services. They would also contribute to the supply of housing required to meet current and future needs. Due to the shortfall in housing land supply in the Council's area, I have afforded this matter moderate weight.
41. However, the benefits of the proposed dwellings, including their contribution to the shortfall in housing supply, would all be small-scale. The proposed dwellings would not entirely fulfil the social role, they would not create a high quality built environment which supported community health, social and cultural well-being. Moreover, the proposed dwellings would fail to achieve the environmental role, as they would not protect and enhance the built and historic environment. The failure of the proposed dwellings to meet the social and environmental roles means that they would not amount to sustainable development as defined in the Framework.

42. The harm to the CA would be 'less than substantial' within the meaning ascribed by the Framework. However, in my view the small scale public benefits of the proposal, notably the increase in the supply of housing, would not outweigh the harm caused to the heritage asset.
43. Accordingly, the adverse impacts of the proposed dwellings would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusions

44. Neither appeal scheme would accord with the Development Plan or be consistent with the Framework.
45. For the reasons given above I conclude that both appeals should be dismissed.

Stephen Hawkins

INSPECTOR