
Appeal Decision

Site visit made on 10 May 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 31 May 2017

Appeal Ref: APP/J1860/W/16/3165676
54 Spring Lane, Malvern WR14 1AJ

- 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 J Hennessey against the decision of Malvern Hills District Council.
 - The application Ref 16/01119/FUL, dated 26 July 2016, was refused by notice dated 6 December 2016.
 - The development proposed is erection of a single dwellinghouse.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of future occupiers, with regard to privacy, and on the living conditions of the occupiers of 56 Spring Lane, with regard to outlook.

Reasons

3. The appeal site currently forms part of the garden of a two storey dwelling at 54 Spring Lane. To the south is another two storey dwelling at No 56. Both houses are oriented with their gable ends facing the road and the main bulk of the houses stretching back east to west with their gardens to the south adjacent to the highway. They are part of a line of dwellings of various designs on the west side of Spring Lane with a bowling club to the rear and large industrial buildings to the east.
4. It is proposed to construct a one bedroom detached dwelling that would sit between Nos 54 and 56. It would have an asymmetric roof sloping away from the road which, according to the Council, would be about 6 metres high to the ridge, a figure that has not been disputed. The slightly elevated garden would be lowered.
5. The proposal follows two previous planning applications for a dwelling¹ on the site, the most recent of which was dismissed on appeal on 13 April 2016.² There is disagreement between the parties as to the extent that the current proposal differs from the scheme dismissed on appeal, with the Council describing it as 'broadly similar' and the appellant stating that it is a 'complete redesign'. However, it is apparent from the respective plans, and both parties

¹ Refs 14/01393/FUL & 15/00259/FUL

² APP/J1860/W/15/3132014

concur, that the asymmetric or offset roof apex, in the current proposal, does reduce the eaves height at the front of the building and its overall bulk and massing, compared with the previous application.

6. A window would be located in the north elevation of the proposed dwelling, facing towards No 54. Although not exceptionally wide, the window would be tall and, as is clear from the submitted plans, extend above the lower eaves height of the eastern elevation and about half way towards the full ridge height. It would be only about 11 metres from the rear elevation of No 54, which has two first floor bedroom windows. I consider that views from those windows would be fairly direct, though downwards, towards the tall living area window of the proposed dwelling. Consequently, future occupants of the proposed dwelling would be overlooked.
7. Although they are bedroom windows, bedrooms are habitable rooms and it would not be reasonable to expect future occupiers of the proposed new dwelling to take comfort from the suggestion that they would be mainly occupied at night when curtains are drawn.
8. The design of the ground floor of the dwelling is described as open plan and there would be bi-fold glazed doors in the west elevation, off the kitchen/diner, leading to the garden. Nevertheless, the window in the north elevation would still be the principal window serving the lounge or living area. Given the height and expanse of the window, I do not consider that planting or indeed obscure glazing would provide an acceptable solution, as the extent required for screening would itself have an adverse enclosing effect on future occupiers.
9. The proposed dwelling would be even closer to No 56 than to No 54. Two of the ground floor windows at No 56, serving a study and a kitchen, provide views towards the boundary with No 54. Although there is a hedge separating the properties, there is a gap where the hedge ends and meets a lower wall near the garage at No 56. There would also be no guarantee that the hedge would remain or not be reduced in height. The outlook from the ground floor windows of No 56, albeit reduced by the current hedge, would be onto the proposed parking spaces and south elevation of the new dwelling.
10. It is acknowledged that the proposed dwelling has been reduced in bulk and massing from a previous proposal, and that the roof would slope away, but it would still present a stark southern elevation rising up to the west to a height of approximately 6 metres. That would be well above the hedge and in close proximity to No 56. Therefore, it would have an overbearing effect on the occupiers of that existing dwelling. That would still be the case, even if the hedge were replaced by a 2 metre high fence or wall, which could potentially be erected without planning permission.
11. The proposal would have some benefits. According to paragraph 7 of the National Planning Policy Framework (the Framework)³, there are three dimensions to sustainable development: economic, social and environmental. In economic terms, there would be a contribution during the construction period and subsequently from future occupiers. Socially, an additional dwelling in a sustainable location would add to the supply of housing, although the Council advises that it can already demonstrate in excess of a 5-year housing land supply (HLS), which has not been disputed. Whilst such contributions are

³ Published 2012

still positive, they are limited by the fact that the proposal relates to a single, one bedroom house.

12. The environmental dimension includes a consideration of enhancement of the built environment. The construction of a dwelling on a relatively cramped site with associated adverse effects on future occupiers and the occupiers of a neighbouring property weighs significantly against the proposal.
13. Paragraph 3.6 of the appellant's statement of case submits, with reference to the alleged harm, that: *'It is not considered that these matters amount to significant and demonstrable adverse impacts referred to in the Framework and would not outweigh the benefits of the proposed development'*. However, that appears to refer to the test, with its 'tilted balance', in the fourth bullet point of paragraph 14 of the Framework. That test would only be applicable if the development plan were absent, silent or out-of-date. For example, via paragraph 49 of the Framework, if the local planning authority could not demonstrate a 5-year HLS.
14. As there are relevant policies in the South Worcestershire Development Plan (SWDP)⁴ and the Council advises that it can demonstrate a 5-year HLS, the normal planning balance applies. Moreover, an up-to-date development plan is the vehicle for delivering sustainable development, an approach reflected in SWDP policy SWDP 1. Planning law also requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise.⁵ The lack of supplementary planning guidance or a design guide, referred to by the appellant, does not affect the decision maker's legitimate role in making a planning judgement, when applying relevant policies from the development plan.
15. The above factors lead me to conclude that the proposed development would harm the living conditions of future occupiers, with regard to privacy, and would adversely affect the living conditions of occupiers of No 56, with regard to outlook. It would, therefore, conflict with policy SWDP 21 of the SWDP which advises that, amongst other things, development should provide an adequate level of privacy, outlook and should not be unduly overbearing. It would also be contrary to a similar aim within paragraph 17 of the Framework and the good design requirements expressed in paragraphs 56 and 57. The harm that I have identified and the conflict with the development plan outweighs the limited benefits offered by the proposal.

Conclusion

16. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR

⁴ Adopted February 2016

⁵ s.38(6) Planning and Compulsory Purchase Act 2004 and s.70(2) Town and Country Planning Act 1990