The Planning Inspectorate

# Appeal Decision

Site visit made on 11 January 2018

**by B Bowker Mplan MRTPI**

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

**Decision date: 30th January 2018.**

**Appeal Ref: APP/F0114/W/17/3180096**
**27 Rockliffe Avenue, Bathwick, Bath BA2 6QP**

- 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 & Mrs Cockayne against the decision of Bath & North East Somerset Council.
- The application Ref 16/02520/FUL, dated 17 May 2016, was refused by notice dated 6 February 2017.
- The development proposed is demolition of existing dwelling to be replaced with a new build house

## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. Since issuing its decision, the Council adopted its Placemaking Plan (PP, 13 July 2017). The parties have had the opportunity to comment on the effect of this matter on the proposal as part of the appeal process. The Council no longer refer to saved policies of the Local Plan. Accordingly the appeal has been determined taking into account policies of the PP.

## Main Issues

3. Based on the evidence before me, the main issues are:

   - The effect of the proposal on the living conditions of neighbours residing at Nos 25 and 29 Rockliffe Avenue, with particular reference to outlook and day and sunlight; and,

   - Whether the proposal would preserve or enhance the character or appearance of the Bathwick Conservation Area (BCA).

## Reasons

*Neighbours*

4. The appeal site comprises a detached two storey dwelling with a hipped roof. No 25 is to the immediate west of the site and comprises a detached bungalow whilst No 29 is to the immediate east and comprises a two storey detached dwelling with attic bedroom.

5. During my site visit, I viewed the appeal site from both Nos 25 and 29. A window serving a bedroom to the side of No 29 faces towards the site. I saw

that the outlook from this bedroom window is open across a flat roof and a modest centrally sited pitched roof, with the main pitched roof form of No 29 out of direct view. The roof of the proposed dwelling would be of an increased bulk and depth from this vantage point. Whilst the proposed roof would slope away from No 29 and not be located on the site boundary, in comparison with the existing roof, it would be closer to the bedroom window at No 29 and would extend across its entire open aspect.

6. Whilst there is no planning right to a private view, the resultant increase in mass, scale and proximity of the proposed roof to the bedroom window would have a particularly overbearing effect on the outlook of neighbours at No 29. As the scale of the proposed roof would significantly and harmfully enclose the existing open outlook, I disagree with the appellants that the change in outlook for neighbours at No 29 would not be demonstrably harmful. This harm would not be mitigated by angled views towards the appellants' garden. Nor would the uniform detailing of the proposed roof or its set back from the proposed rear elevation mitigate this loss of outlook. In this respect, I share the concerns raised by the Council and neighbours. Taking the above into account, the proposal would have a significant harmful effect on the outlook of neighbours at No 29.

7. I saw that the attic bedroom at No 29 is served by three roof lights. Whilst the roof lights do not permit an outlook, they nonetheless ensure that sufficient levels of day and sunlight would reach the attic bedroom at No 29. On this basis, I am satisfied that the proposal would not have a harmful effect on the levels of day or sunlight for neighbours residing at No 29.

8. During my visit I viewed the site from windows at the facing side elevation of No 25 which serve a kitchen, dining room and utility room. I saw that the kitchen is served by a window in the rear elevation which faces away from the proposed dwelling. As the kitchen and dining room are open plan, the rear facing window would ensure day and sunlight reaches this room. Concerns are raised regarding the accuracy of the submitted plans, the data used and the level of survey work undertaken in relation to the Daylight and Sunlight Study[1]. However no substantive evidence is before me to disagree with the findings of the Daylight and Sunlight Study.

9. The existing and proposed dwelling would be similar in scale and siting in relation to the facing windows at No 25 and the existing ground floor levels. In this respect, I note the conclusion of the Daylight and Sunlight Study and agree with the appellants that the difference between the existing and proposed dwelling is not so materially different as to significantly affect living conditions of neighbours at No 25 with reference to day and sunlight. Nor would the proposal result in a material change of outlook for neighbours residing at No 25 when viewed from the noted facing windows.

10. In summary, I have found that the proposal would not have a harmful effect on the living conditions of neighbours residing at No 25 with reference to daylight, sunlight and outlook, nor to neighbours at No 29 with reference to day and sunlight. However the absence of harm in these respects would not outweigh, prevent or reduce the harm identified to the living conditions of neighbours residing at No 29 with reference to outlook.

[1] Undertaken by Right of Light consulting, April 2017

11. Therefore the proposal would have a harmful effect on the living conditions of neighbours residing at No 29, with particular reference to outlook. Consequently the proposal would be contrary to PP Policy D6 which is of most relevance to this matter. Insofar as it relates to this matter, this policy seeks to ensure that development allows existing and proposed development to achieve appropriate levels of outlook.

*Conservation Area*

12. PP Policy HE1 states that development, including any proposed demolition within a conservation area, will only be permitted where it will preserve or enhance those elements which contribute to the special character or appearance of the conservation area. The policy also states that great weight will be given to the conservation of the district's heritage assets.

13. Paragraph 138 of the National Planning Policy Framework (the Framework) states that not all elements of a conservation area will contribute to its significance. Paragraph 138 of the Framework goes on to say that the loss of a building (or other element) which makes a positive contribution to the significance of the conservation area should be treated as either substantial harm or less than substantial harm, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area.

14. A Structural Report accompanies the appeal and a number of concerns have been submitted in this respect, particularly in the light of Local Plan Policy BN.7 which was in effect at the time of the planning application. However, with reference to the above noted policies, the principle of whether the demolition of No 27 is acceptable is based on whether the existing property contributes to the significance of the BCA and not structural considerations.

15. The Council state that whilst No 27 and surrounding properties are unremarkable, combined they have a group value that contributes to the significance of the BCA. During my site visit I saw that properties along the immediate street scene comprise a bungalow at No 25 and two storey detached dwellings which vary in form and appearance. The wider street scene comprises two storey detached, semi-detached and terraced properties with a range of forms and appearances. Although the existing property and those in the surrounding area have hipped roofs, gabled frontages are within the immediate street scene at Nos 16, 16a and at terraced properties to the east along Rockliffe Avenue. I also saw that views of No 27 are restricted primarily to this immediate section of Rockliffe Avenue.

16. As nearby properties contain some variation in wall materials, the wall materials of the existing property are not a defining characteristic of the surrounding area. However, I agree with the Council that the two storey scale and front garden at No 27 are characteristic of the surrounding area. That said, based on the varied form and appearance of properties along this section of Rockliffe Avenue, I cannot agree that No 27 is part of a recognisable group that make a positive contribution to the significance of the BCA as a whole.

17. Furthermore, as part of the assessment of a replacement dwelling[2] near the appeal site, the Council considered No 33 to be located in a neutral area within

[2] Council Ref 12/03490/FUL and 12/03491/CA, referred to within the appellants' Heritage Statement

the BCA, that has a mixture of property types and links two more positive areas at the lower end of Rockliffe Road and Forester Avenue with Hampton Road. This reinforces my view that the appeal site in conjunction with this section of Rockliffe Avenue does not make a positive contribution to the significance of the BCA. On this basis I agree with the appellants that the site and its surroundings make a neutral contribution to the BCA as a whole.

18. The dwelling would have a similar footprint to the existing dwelling and would retain a front garden. In this light and based on its discrete siting in between Nos 25 and 29, the dwelling would not be a prominent feature in the street scene. The hipped roof to the front of the dwelling would be steeply inclined and there are no examples of north to south running gable roofs in the surrounding area. However the proposed roof would closely resemble the existing roof at No 27 when viewed from the south and would not look out of place near gable frontages at Rockliffe Avenue. Nor would the increased built form of the dwelling be noticeable within the street scene.

19. Although materials vary to some extent along Rockliffe Avenue, I share the Council's concern that the proposal would introduce wall materials that are not characteristic of the surrounding area or this part of the BCA. In addition, I note that the appeal site is located some distance away from the property cited by the appellants as a local precedent for the palette of materials sought. I also saw that the development referred to at No 33 has a reduced visual presence within the street scene in comparison with the appeal proposal. This aside, a suitably worded condition would ensure that samples of appropriate materials are submitted to the Council for approval. In addition, based on my reasoning above, the proposal would not have a harmful effect on the the view of Camden Terrace when viewed from the top of Rockliffe.

20. Concern is raised regarding the effect of the proposal on the BCA when viewed from the river. However, based on my site visit observations, I have no reason to disagree with the Council's assessment that the proposal would be an improvement when viewed from this vantage point in the context of the existing rear extensions at the property. In this light the proposal would make a positive, albeit modest contribution to the BCA. Taking the above reasons into account, the replacement dwelling would preserve the character and appearance of the BCA as a whole.

21. Concern is raised regarding the effect of the proposal on the WHS. However, as the proposal would not harm the character and appearance of the BCA and with reference to the Council's assessment, the proposal would not have a harmful effect on the WHS. Moreover based on the evidence before me, dismissing the appeal on this basis would be unjustified.

22. Therefore the proposal would preserve the character and appearance of the BCA. Consequently the proposal would meet the requirements of Core Strategy Policy CP6 and PP Policy HE1. Combined, these policies seek to ensure that development contributes positively to local character and preserves the elements which contribute to the special character or appearance of a conservation area.

*Other Matters*

23. The proposal would support construction employment and would result in modest benefits to the BCA, with reference to the replacement of the rear

extensions at the site. In addition no harm is identified to the BCA as a whole or to neighbouring living conditions with reference to day and sunlight, or to the outlook of neighbours at No 25. However, these modest benefits and factors combined would not outweigh the harm identified above in relation to the outlook of neighbours residing at No 29.

**Conclusion**

24. For the reasons given above, and having taken all matters raised into account, I conclude the appeal should be dismissed.

*B Bowker*

INSPECTOR