



Appeal Decision

Site visit made on 2 July 2019

by I Bowen BA(Hons) BTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2019

Appeal Ref: APP/Y3940/W/19/3224423

Peacock Grove, land adjacent to Brook Drive, Corsham SN13 9AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by RST Corsham Ltd against the decision of Wiltshire Council.
 - The application Ref 18/07085/VAR, dated 25 July 2018, was refused by notice dated 15 February 2019.
 - The application sought planning permission for the erection of up to 31 dwellings following the demolition of 6 no. existing dwellings and associated access without complying with a condition attached to planning permission Ref 15/11544/OUT, dated 31 May 2017.
 - The condition in dispute is No 4 which states that:
 - "4) *The development hereby permitted shall be carried out in accordance with the following approved plans:*
1003_Red Line Plan - Site Location Plan
FMW1379 - GA02 rev A - Horizontal and Vertical 2.4m x 27m Visibility Splays
GOLD19349-15B - Parameters Plan
GOLD19349-14A - Buffer Planting Proposals
FMW1379-GA01 rev C - Proposed General Arrangement Option 2"
 - The reason given for the condition is: "*In order to provide certainty*".
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Decision

1. The appeal is dismissed.

Procedural Matters, Background and Main Issues

2. Outline planning permission was granted on appeal (the extant permission) with all matters reserved, except access, on 31 May 2017.
3. During the current appeal, the appellant requested that a revised set of plans and drawings be substituted for those originally submitted with the appeal proposal. I understand that the plans have also formed the basis of a new planning application to the Council which was made concurrently with the appeal. Making such a fresh planning application would accord with good practice¹ in seeking to overcome reasons for refusal.
4. Nevertheless, I must deal with the request that they should also form the basis for the consideration of this appeal. In summary, the further amendments to the proposed scheme would, in comparison to the appeal proposal as originally applied for, comprise the re-positioning of a proposed carriageway, relocating a

¹ See 'Procedural Guide – Planning Appeals – England', Planning Inspectorate.

- proposed footway onto the opposite side of the carriageway, altering the geometry of a proposed junction together with the introduction of a pedestrian crossover; and the introduction of a buffer in front of proposed car parking spaces.
5. Whilst amendments can in some circumstances be accepted in line with the Wheatcroft principles², the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.
 6. Some aspects of the proposed revisions might be viewed as mitigating the perceived harmful effects of the changes which were originally sought and considered by the Council. However, the revisions would, in my judgement, potentially raise significant issues upon which interested parties have not had opportunity to comment. Consequently, I have based my decision on the plans upon which the Council made its decision when it determined the application.
 7. The proposal also raises procedural questions relating to the use of the Section 73 (s73) process. In this regard, it is proposed to amend the approved plans relating to the precise location of the principal vehicular access from Brook Drive. As a consequence, a total of two existing dwellings plus an attached garage connected to 21 Brook Drive would be demolished as part of the scheme, in contrast to the demolition of six dwellings under the extant permission. In turn, therefore, the effect of the proposal would necessarily require the alteration of the description of the consented development and reduce the area of the 'red line' development site.
 8. The appellant has submitted a revised indicative sketch masterplan purporting to show that the net additional number of dwellings to be provided would remain unchanged at 25. Regardless of the stated intention, however, the layout of the development is, as a matter of fact, reserved for subsequent approval. The plans showing the number of dwellings now being proposed, whilst helpful, can therefore be treated as illustrative only.
 9. Consequently, in the event of the appeal being allowed, the developer would still be entitled to build up to 31 dwellings, a net increase of up to 29 dwellings, exceeding the stated increase referred to in the appeal evidence.
 10. Given the above, the Council and interested parties consider the proposed changes to be fundamental elements of the overall scheme. It is therefore submitted by those parties that such changes are not capable of being legitimately effected through a s73 application.
 11. However, whilst such variations to approved plans are often described as minor material amendments (MMAs), the permissible extent of such changes are not set out in statute. The Planning Practice Guidance advises that amendments are likely to be an MMA where their scale and/or nature results in a development which is not substantially different from the one which has been approved.
 12. In this case, the scheme as amended would still be for the construction of up to 31 houses in the same area, with the principal access being gained in roughly

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

the same location. It would also comprise the demolition of existing dwellings, albeit fewer in number than specified in the extant planning permission. Moreover, even if the resulting number of net additional dwellings built were greater, as discussed above, this would not in my judgement amount to a substantially different development from the extant permission.

13. In this context, I note that the proposed revisions were the subject of public consultation and parties have therefore had full opportunity to comment on any likely effects arising from them.
14. Furthermore, whilst s73 of the Act makes no provision for an amendment to the description of a development, it does not expressly prohibit it either. In this regard, it would not be unreasonable in this case for me to regularise the description and extent of the proposal as a consequence of the variation of the scheme, in the event I found the proposal to be otherwise acceptable. This would remedy the anomalies between the number of dwellings to be demolished and the original description of the development.
15. I am therefore satisfied, as a matter of fact and degree, that the proposed changes being sought are capable of being considered via an application under s73 of the Act.
16. Aside from the procedural objections, however, the refusal notice and officer's report also reflected the Council's concerns on the planning merits of the proposal. Consequently, the main issues are the effect of the proposal on (i) the living conditions of neighbouring occupiers with respect to noise and disturbance; and (ii) the character and appearance of the area.

Reasons

Living conditions

17. The main consequence of the siting of the principal site access a short distance to the west of the previously consented alignment would be the retention of five existing dwellings on the Brook Drive frontage, which would otherwise be demolished. The development would therefore result in the demolition of only one dwelling (No 19) on this part of the site.
18. However, the junction bellmouth would, as a result, curve tightly around the front of No 21, removing a portion of its front garden, before running closely along the western flank of the dwelling. Indeed, in doing so, it would require the removal of its detached garage and driveway. Although this would not result in an unacceptable loss of private amenity space for No 21, there would be very little separation between the dwelling and passing vehicles, given the footway would be sited on the opposite side of the carriageway.
19. According to the appellant's evidence, the development would be expected to generate approximately 28 two-way vehicle movements in the 'worst-case' peak hour period and it would be reasonable to assume a significant proportion of such trips would be made via the appeal access. This would be likely to result in a fairly regular flow of traffic passing very close to the front door and habitable rooms of No 21. To my mind, this would result in an unacceptable level of noise and disturbance and I conclude it would therefore be significantly harmful to the living conditions of the occupiers of that dwelling.

20. Consequently, the proposal would be in conflict with the adopted Wiltshire Core Strategy (January 2015) (the WCS) Core Policy CP57 which requires proposals for new development to have regard to the compatibility of adjoining buildings and uses and the amenities of existing occupiers.

Character and appearance

21. Brook Drive is a sizeable residential estate characterised largely by two-storey detached and semi-detached dwellings. There is a high degree of consistency in the size and type of dwellings, their building lines, use of materials and in the landscaped verges at street corners. The buildings tend to be set back a short distance from the road behind driveways and lawns, often with planted boundary treatments. As a result, the area is a pleasant and attractive residential environment.
22. The proposal would give rise to a materially different effect on the street scene compared to the extant permission. That extant scheme would, subject to reserved matters, have been likely to comprise the construction of new dwellings to replace some of those which were originally proposed to be demolished. Nevertheless, the retention of a greater number of dwellings would not, given the existing character of the area, be harmful to the street scene.
23. As noted above, the appeal site access as now proposed would run uncharacteristically close to No 21 and would also include a 1.2m high retaining wall. However, the siting of the proposed access is at a point where Brook Drive curves around where there is already variation in the orientation and alignment of buildings. In my judgement, even allowing for changes in the ground levels, the proposal would not therefore interrupt the prevailing pattern of development or give rise to a materially harmful effect on the overall character and appearance of the area.
24. Accordingly, in conclusion on this main issue, I find no conflict with WCS Core Policy 57 which requires a high standard of design in all new developments, creating a strong sense of place through drawing on the local context and being complementary to the locality.

Other Matters

25. During the appeal, the appellant submitted an executed Unilateral Undertaking (UU) committing to developer contributions towards affordable housing, primary education, amenity land and waste/recycling. I understand the UU is very similar to that which accompanied the extant permission. The Council has not confirmed its agreement or otherwise as to whether the contributions would be necessary and acceptable in this case, having regard to the statutory tests.
26. However, I note the UU would provide 30% of the dwellings as affordable housing units with a suitable mix of affordable rented and shared ownership units to be finally agreed with the Council prior to commencement of development. This would comply with WCS Core Policy 43 which requires such provision to be made on sites of five or more dwellings. Given the benefits of providing affordable housing, this is a matter to which I attach moderate weight given the scale of the scheme. However, it would not be sufficient to outweigh the harm I have found and therefore would not in itself be sufficient to justify granting permission.

27. As regards other UU contributions, these are intended to mitigate harm arising from the proposed development. As the appeal is to be dismissed, I need not consider the necessity for such contributions further.
28. The proposal would not give rise to any harmful effect on the operation of the rail and highway networks or on road safety. Similarly, the effect on trees and ecology are matters that are safeguarded through existing conditions which could be re-imposed, or would otherwise not give rise to any material harm. In respect of drainage, whilst interested parties have drawn attention to past flood events, the Council has confirmed that technical consultees have indicated that their initial objections have been overcome through changes incorporated into the current proposal. I have no substantive evidence before me to dispute that advice. However, these are neutral considerations in weighing the planning merits of the proposal.
29. A number of other representations have also been made by interested parties. Whilst I have carefully considered these, they do not alter my conclusion on the main issues that the scheme would be harmful to the living conditions of existing occupiers. I have not therefore considered such matters further in my decision.
30. The appellant submits that the Council did not, in line with the requirements of the National Planning Policy Framework, approach the determination of the planning application in a positive and creative way. There is some dispute over the extent of the Council's willingness to discuss the proposal at that stage. Nevertheless, that is not a matter which goes to the planning merits of the proposal before me.
31. The appellant has also drawn attention to delays in implementing the scheme as a result of the Council's refusal of the current proposal. However, as I have also found the appeal should be dismissed, I attach little weight to that consideration.

Conclusions

32. Whilst I have found that the proposal would not result in any significant harm to the character and appearance of the area, and it would make provision for affordable housing, it would give rise to unacceptable living conditions for neighbouring occupiers. For the reasons given, and having regard to all other matters raised, the appeal should be dismissed.

Ian Bowen

INSPECTOR