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# Appeal Decision

Site visit made on 4 December 2019

**by S Leonard BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 January 2020**

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**Appeal Ref: APP/Y3940/W/19/3236701**

**Land opposite nos 8 to 10 Vowley View, Royal Wootton Bassett SN4 8HT**

- 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 Cooper Estates Strategic Land Limited against the decision of Wiltshire Council.
  - The application Ref 19/05866/FUL, dated 17 June 2019, was refused by notice dated 9 August 2019.
  - The development proposed is erection of a detached two bedroom bungalow.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The description of development on the heading above differs from that on the planning application form and decision notice. I have omitted reference to 'resubmission of 18/06845/FUL' since this is not descriptive of the actual development proposed.

## Application for costs

3. Applications for costs were made by Wiltshire Council and Cooper Estates Strategic Land Limited against each other. These applications will be the subject of separate Decisions.

## Background

4. The site has been the subject of three previous dismissed appeal decisions relating to the erection of a single dwelling. These are material considerations to be apportioned appropriate weight. The appeal decision in 2003<sup>1</sup> predated the permission to erect dwellings to the east of the appeal site, and the decision was made within the context of the appeal site being located adjacent to open countryside. The appeal site context is materially different since the determination of this appeal. The Council has confirmed that there is no objection to the principle of residential development on the appeal site, which lies within the designated settlement boundary for Royal Wootton Bassett.

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<sup>1</sup> APP/J3910/A/03/1119806

5. The 2015<sup>2</sup> and 2017<sup>3</sup> appeals both related to the development of the site with a detached two storey dwelling positioned at the northern end of the plot, and in both cases the Inspector concluded that the dwelling would adversely affect the living conditions of the occupiers of No 2 Brinders Close, in respect of outlook from that property. It is acknowledged that the appellant has sought to respond to the concerns raised by the previous Inspectors, and that the current proposal differs from these predecessors in several respects, notably, that the proposal is for a single storey dwelling. These matters have been taken full account of in the reasoning set out below.

## **Main Issues**

6. The main issues are:

- Impact on the character and appearance of the surrounding area;
- Whether the proposed development would provide appropriate living conditions for future occupants, with particular reference to privacy; and
- Whether the development would result in localised flood risk.

## **Reasons**

### *Character and appearance*

7. The appeal site comprises a roughly triangular shaped area of grassed land, including some vegetation adjacent to the eastern side boundary. It is located within a suburban housing estate, and occupies a visually prominent corner position. Two sides of the site are bounded by roads, with the main frontage facing onto the cul-de-sac of Vowley View. To the rear, the site adjoins a strip of undeveloped land which forms part of land reserved for an oil pipeline (the reserved land). The site is surrounded by residential development to the west in Vowley View, to the north in Highfold, and, to the rear, comprising the more recently developed properties in Brinders Close and Windmill Road, which are separated from the site by the reserved land.
8. Vowley View and Highfold are characterised by detached, two storey houses, finished in brick under tiled pitched roofs. The front gardens are open plan and frontage parking is a feature of the roads. The three dwellings to the rear of the site are also detached two storey houses.
9. The Council has confirmed that the appeal site is not formally designated as open space/green infrastructure. Both parties have drawn my attention to the High Court decision in 2018, which quashed the Council's designation of the site as a 'town green', and the subsequent Court of Appeal dismissal of the Council's challenge to this decision. The appellant has confirmed that the site is privately owned land, and it is fenced off, preventing general public access.
10. Notwithstanding this, on my site inspection, I found that, although the road frontages of the appeal site are bounded by low, pale fencing, the green vegetated nature of the site makes a positive contribution to the visual amenities of the street scene within Vowley View and Highfold, complementing the open-plan, spacious character of the property frontages.

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<sup>2</sup> APP/Y3940/W/15/3132561

<sup>3</sup> APP/Y3940/W/17/3169482

11. The proposal is to erect a detached pitched roof bungalow on the site, which would front directly onto Vowley View, with a side elevation onto Highfold, and vehicular access to 2 parking spaces from that road. The proposed small set-back of the building from the Vowley View frontage would be at odds with the aforementioned open plan, spacious character of property frontages within the road. Notwithstanding its single storey height and corner location, the building would have a visually intrusive, oppressive impact on the prevailing spacious and open street scene. Even the proposed building set-back from the Highfold frontage, whilst providing parking and garden area to the side of the building, would not result in so spacious a frontage arrangement as is characteristic of the immediate locality. The building would be set closer to the road than those on the opposite side of Highfold, and the parking spaces would be tightly positioned close to the eastern side boundary.
12. The tapering nature of the site means that the southern end of the new building would be sited close to the front and rear site boundaries, thereby exacerbating the cramped appearance of the development. The impact on the street scene would be compounded by the prominent corner position of the site, where the development would be particularly apparent when approaching the site from the north, which is the means of vehicular access to the cul-de-sac. The detailed design of the new building would also relate poorly to the street. The small windows and large areas of blank wall space would present an inappropriate front elevation, which is lacking in visual interest, and would compound the visually dominant impact of the proposal on the street scene.
13. The incongruous nature of the development would be magnified by the single storey nature of the building, which is surrounded on all sides by two storey houses set in more spacious surrounds. The appellant has drawn my attention to a number of bungalows within the vicinity of the appeal site, including on corner locations, which are located adjacent to two storey houses. I acknowledge that bungalows per se are not out of keeping with the prevailing pattern of development within the vicinity of the appeal site. However, I find that none of the circumstances of the cited bungalows are directly comparable to the appeal proposal, and that these bungalows are set in more spacious plots with more generous open plan street frontages than the appeal proposal. Therefore, these developments do not persuade me to come to an alternative view with regard to this main issue. I must determine this appeal on its individual planning merits and on the particular circumstances of the appeal site.
14. The resulting harm to the visual amenities of the street scene would not be outweighed by the proposed use of materials and roof form which are sympathetic to those of neighbouring dwellings.
15. For the above reasons, I conclude that the proposed development would have a detrimental impact on the character and appearance of the area. The appeal scheme would be contrary to the aims of Core Policy 57 of the Wiltshire Core Strategy 2015 (CS) and Policy 7 of the Royal Wootton Bassett Neighbourhood Development Plan 2019, which, amongst other things, seek to ensure that new development is of a high standard of design, including relating positively to the existing pattern of development, responding positively to the existing townscape in terms of building layouts, built form, building line, plot size and streetscape. For similar reasons, the proposal would also be contrary to chapter

12 of the National Planning Policy Framework 2019 (the Framework) which seeks to ensure high quality design.

*Living conditions*

16. The Council is concerned that the proposal would not provide acceptable levels of privacy for future occupants of the new dwelling, due to direct overlooking from adjacent properties to the east of the site. The proposed private garden amenity areas for the development would be to the east and south sides of the dwelling, the latter of which would have access via bi-fold doors leading off the open plan kitchen/living room. The two neighbouring properties directly to the east of the site, 2 Brinders Close and 36 Windmill Road are two-storey houses both with main first floor windows on their west side elevations.
17. The appellant submits that the houses to the east of the site would not give rise to harmful overlooking to the appeal proposal, having regard to the common occurrence of overlooking from first floor bedroom windows to neighbouring gardens within estate-style residential development. The appellant notes that such views are from bedrooms which are not the focus of activity/use during the day time. Specific reference is made to the first floor bedroom window on the gabled part of the west elevation of No.36, from which unobstructed straight views would look towards the bottom third of the southernmost private garden of the appeal scheme. The appellant notes that users of the room would have to turn to the right to look towards the rear of the dwelling, and would not have views of the dwelling if positioned back from the window. The appellant further states that existing and proposed landscaping along the east side boundary would minimise the opportunity for overlooking to the appeal scheme from the neighbouring houses.
18. I find that the privacy of the future occupants of the appeal scheme would be affected by windows on the west elevations of both 2 Brinders Close and 36 Windmill Road. No.2 contains a number of main windows on its west side at ground and first floor level including a ground floor bay. Hence, whilst this property has a north facing frontage to Brinders Close, its west elevation is also a principal elevation, and west-facing windows are an integral part of the design of the property. Whilst the existing close-boarded fencing along the eastern side boundary would mitigate against any loss of privacy arising from the ground floor windows, the proposed two first floor windows, which are located approximately 9 m from the eastern boundary of the appeal site, would have views directly over the private outside amenity area to the rear of the new dwelling.
19. In the case of No.36, the west elevation includes a main entrance door and large ground and first floor principal windows, situated a similar distance from the proposed garden area to the south of the new dwelling, as the west elevation windows in No.2 are located in relation to the proposed rear garden. The low palisade fencing along the eastern boundary of the appeal site means that there are currently clear views from the front elevation of No.36 towards the appeal site. Whilst any privacy impacts arising from the ground floor fenestration could potentially be mitigated against by appropriate boundary treatment, this would not overcome the potential for overlooking from the first floor principal windows.
20. I accept that some degree of overlooking from first floor windows is an expected occurrence within built-up residential areas. However, in the context

of the appeal scheme, notwithstanding the use of the first floor rooms as bedrooms, the juxtaposition of the neighbouring properties in relation to the development, in combination with the number of large, clear-glazed first floor windows in their principal west elevations, would result in actual and perceived overlooking to the proposed private external amenity areas of the appeal scheme, amounting to a detrimentally harmful impact on the privacy of the future occupants of the development.

21. The appellant refers to the appeal site planning history, whereby the privacy of the future occupants of the development was not raised as a concern by the Council or the Inspector in considering the 2003, 2014 and 2016 proposals. These schemes differed notably from the current appeal scheme in terms of the design and position of the new dwelling and its private amenity area, in relation to the neighbouring development to the east. Furthermore, the Council did raise the issue of overlooking to the proposed development in respect of the two most recent refusals prior to the appeal application, in 2017 and 2018. Accordingly, the appeal site planning history does not persuade me to alter my view on this main issue.
22. For the above reasons, I conclude that the proposed development would not provide adequate living conditions for future occupants in terms of privacy. The appeal scheme would therefore be contrary to the aims of CS Core Policy 57, in so much as it requires development proposals to ensure appropriate levels of amenity within the development itself, including the consideration of privacy. This is generally consistent with paragraph 127 of the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users.

#### *Flood risk*

23. There remains dispute between the main parties regarding the sufficiency of information submitted in respect of localised flood risk. The Council's second refusal reason relates to the absence from the planning application submission of details in respect of surface and foul water drainage and infiltration testing, sufficient to demonstrate that the appeal scheme is capable of providing sustainable urban drainage measures, and that it would not result in any localised flood risk. An informative note on the decision notice confirms that, subject to the submission of outline plans for surface and foul water drainage and infiltration details, this refusal reason may be overcome.
24. The appellant's appeal statement includes an outline Drainage Strategy, providing three options for site drainage, based on the results of future infiltration testing. Option 1, which is based on good infiltration rates, would comprise infiltration in permeable areas by permeable paving, together with Rainhandler guttering and rainwater harvesting. Option 2, based on poor infiltration rates, would consist of infiltration by permeable paving, together with underground shallow storage. In the event that infiltration is not possible, Option 3 would involve permeable paving incorporating a lined storage tank, with controlled discharge to local surface water sewer, highway drain or existing combined sewer in Sherfields.
25. The Council remains concerned that the submitted information, in the absence of infiltration testing and a groundwater level assessment, does not demonstrate the viability of any of the three proposed options. I share this concern, since the appellant's drainage statement confirms that historic

borehole logs in the area and evidence provided in support of the neighbouring planning application for 100 dwellings, showed that the underlying geology consists of Clay and mudstone with limited infiltration potential, so that typical soakaways would not be recommended for the appeal site. Furthermore, Option 3 would require crossing of privately-owned land, permission for which is not guaranteed, and the response from Wessex Water, the statutory undertaker, has confirmed that the discharge of surface water into the public foul water system is not permissible.

26. The appellant asserts that the surface water drainage details comprise a matter which may be the subject of a planning condition and are not an issue which should result in a refusal of planning permission. In this respect, the appellant has drawn my attention to planning permission Ref 19/02051/FUL which relates to a site in Kiln Close, Alderbury, where the Council adopted this approach.
27. Having regard to the aforementioned Drainage Strategy and the Council's response to it, I am satisfied with the Council's approach to this matter. The Council has specifically identified the additional information which would be required in order to enable this matter to be dealt with by means of a condition, and has provided reasoning for the approach taken, having regard to the information which has been submitted by the appellant. Notwithstanding the approach taken with respect to the Kiln Close application, I must determine the appeal on the basis of the proposed development before me, and the specific circumstances of the appeal site, having regard to the adopted Development Plan and advice in the Framework.
28. In the absence of the aforementioned additional information in respect of site infiltration, and due to the uncertainty in respect of obtaining any necessary consent from third party land owners and/or the statutory undertaker, I find that it has not been satisfactorily demonstrated that the appeal scheme can provide a viable drainage strategy that will not increase flood risk elsewhere. For this reason, I cannot conclude that the proposal would accord with CS Core Policy 67, which requires all new development to include measures to reduce the rate of rainwater run-off and improve rainwater infiltration to soil and ground (sustainable urban drainage) unless site or environmental conditions make these measures unsuitable. This is consistent with paragraph 163 of the Framework which requires local planning authorities, when determining any planning applications, to ensure that flood risk is not increased elsewhere.

### **Other Matters**

29. The Framework refers to boosting significantly the supply of housing. When judged against some of the core planning principles, the proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest. There would be a small social benefit in providing an additional housing unit, and economic benefits as a result of the construction and occupation of a new house.
30. However, whilst the issue of localised flood risk may be capable of being satisfactorily addressed through the provision of additional drainage details, the aforementioned benefits would not overcome the harm identified to the character and appearance of the area and the living conditions of future occupants of the dwelling. When assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and

demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations including the Framework.

**Conclusion**

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

*S Leonard*

INSPECTOR