
Appeal Decision

Site visit made on 9 January 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2020

Appeal Ref: APP/Y3940/W/19/3238622

Land to the rear of 107 Bouverie Avenue South, Salisbury SP2 8EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Williams against the decision of Wiltshire Council.
 - The application Ref 19/05592/OUT, dated 10 June 2019, was refused by notice dated 13 September 2019.
 - The development proposed is erection of one dwelling to the rear of 107 Bouverie Avenue South, with associated driveway and parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr and Mrs Williams against Wiltshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The planning application was made in outline with landscaping as the only matter reserved.

Main Issues

4. The main issues are the effect of the proposal on:
 - The character and appearance of the area;
 - The living conditions of the occupiers of nos.107 and 109 Bouverie Avenue South and 9 Francis Way in respect of noise and disturbance, privacy and outlook impacts; and
 - The living conditions of the future occupiers of the development in respect of privacy.

Reasons

Character and appearance

5. The appeal site is located on the east side of Bouverie Avenue South (BAS), and comprises part of the rear garden of the host property, 107 BAS, together with a strip of land adjacent to the southern boundary, which has been severed, and is bounded by close-boarded fencing, to delineate the area of the

proposed access drive. The main part of the site is given over to lawn, planted beds, shrubs, hedging and trees. It is at a lower ground level than that of the parent property and its proposed retained rear garden. Within the appeal site, the land level drops quite steeply towards the rear boundary with the neighbouring properties in Francis Way. The proposal is to erect a detached single storey dwelling, which would be accessed via the existing vehicular access from BAS, via a new driveway located adjacent to the southern site boundary.

6. The site is located within an established residential area. During my site inspection, I observed that there are variety of building designs, heights and sizes, as well as a mix of development layouts, plot sizes, plot shapes and building lines within the immediate locality of the appeal site.
7. The Council has confirmed that the former Housing Restraint Area policy, within which the appeal site was located, no longer applies. Whilst many properties sit within large plots, such generous plots are not a uniform characteristic of the locality. Even allowing for discrepancies within the figures of the appellant and third parties, the appellant has demonstrated that there are variety of 'plot to built development ratios' within the immediate area, and that the appeal proposal would result in ratios for the new development and the host property which are comparable with those within the vicinity of the site.
8. Tandem layout residential developments are evident within the locality of the appeal site, and have been referred to by both main parties. The Council has drawn my attention to the fact that these developments have not been recently approved under current national and local planning policies and that the particular site circumstances differ from those of the appeal site. Nonetheless, I find that this arrangement of development forms part of the generally mixed layout of development within the site locality, including 59a BAS immediately to the north of the appeal site. The Council has confirmed there are no development plan policies restricting tandem residential development.
9. Due to the single storey nature of the new dwelling and its position behind, and at a lower ground level than, the host property, it would not be visually obtrusive in views from the BAS street scene. Its position behind the buildings and rear gardens of neighbouring dwellings on all other sides would also mean that the building would not have a visually intrusive impact on the street scenes of the northern part of BAS and of Francis Way.
10. Driveways to the side of dwellings are an accepted feature of built-up residential areas, and exist within the appeal site vicinity. Close boarded fencing is also a typical form of boundary treatment within urban areas. Furthermore, the proposal would utilise the existing access point from BAS and would retain the protected tree in the southwest corner of the site adjacent to the site frontage, thereby minimising the impact on the site frontage and BAS street scene. Whilst some tree removal will be necessary to accommodate the access drive and dwelling, such tree removal could take place in the absence of any development proposal. The proposed building footprint is such that sufficient space would remain around it to provide soft landscaping and substitute tree planting.
11. For the above reasons, I therefore conclude that the proposal would not harm the character and appearance of the area. As such, it would accord with Core Policy 57 of the Wiltshire Core Strategy 2015 (WCS) and Objective 16 of the

Creating Places Design Guide Supplementary Planning Guidance 2006, in so far as this Policy and guidance require new development to be of a high standard of design, creating a strong sense of place through drawing on the local context, taking account of their local setting, and being complimentary to the locality. For similar reasons, the development accords with guidance in Chapter 12 of the National Planning Policy Framework (the Framework) which requires high quality design.

Living conditions of neighbours

12. The new dwelling would be accessed via a new driveway which would run close to the northern side boundary of 109 BAS, adjacent to that dwelling and its rear garden. During my site visit I observed that the application drawings do not include the single storey kitchen/dining room extension to the rear of no.109. This incorporates glass bi-fold doors along most of its rear elevation, leading directly onto a large, raised patio. Beyond this is the lawned rear garden, at the end of which, and close to the rear boundary, is a paved area, summer house and shed, and various domestic paraphernalia evidencing the use of this particular part of the garden.
13. The new access drive would run alongside the whole of the length of the dwelling at no.109 and its rear patio and garden. During my site inspection I found that it was apparent from the layout of the patio and rear garden, that the area adjacent to the appeal site is well-used as an external amenity area. In addition, I observed that the north side wall of no.109 includes a number of principal windows comprising ground floor study and kitchen windows and first and second floor bedroom windows.
14. The proposed proximity of the new access drive to the southern side boundary is such that the anticipated vehicle movements associated with a four bedroom family sized dwelling, including visitor and delivery vehicles, would lead to unacceptable levels of noise and disturbance (the latter from vehicle lights) within close proximity to no.109, including the aforementioned principal windows, patio and rear garden of that property, therefore causing significant harm to the living conditions of the occupiers of this dwelling.
15. The appellant proposes to mitigate the impact on no.109 through the provision of fencing and vegetation adjacent to the boundary. However, in this instance, I am not satisfied that it has been satisfactorily demonstrated that such potentially harmful impacts can be mitigated against. The use of a non-loose surface material would go some way to mitigate against noise impacts. However, this would not mitigate against noise and disturbance impacts associated with vehicle engines and headlights. The access drive would run for a considerable length within close proximity to the boundary with no.109. It would need to incorporate the existing significant drop in land levels from the front to the rear of the site. Insufficient cross-sectional drawings have been provided to demonstrate how the driveway would incorporate the ground level changes, which potentially would result in the revving of vehicles engines where the driveway rises, and the potential for increased disturbance from vehicle lights as a result of the driveway incline in relation to the neighbouring property.
16. The potential for noise and disturbance to no.109 is exacerbated by the proposed positioning of the turning and parking area and main dwelling entrance adjacent to the rear garden of no.109, potentially resulting in

additional noise disturbance from the banging of vehicle doors, driver and passenger conversations and in-vehicle music/entertainment systems.

17. Furthermore, in addition to the proposed removal of one tree to accommodate the driveway, it is unclear how much of the remaining boundary landscaping, which currently provides effective boundary screening to the rear garden of no.109, would be removed, since landscaping is a matter reserved for future determination.
18. Accordingly, in the absence of precise details of the driveway construction and proposed boundary treatment, I find that it has not been satisfactorily demonstrated that material harm would not be caused to the living conditions of the occupiers of 109 BAS in respect of noise and light disturbance. For similar reasons, I find that the aforementioned harmful impacts would also apply to the host property at no.107, given the proximity of the access drive to the front and side walls of that property, both of which contain principal ground and first floor windows. In this respect it is notable that the proposed curve at the front of the access drive, to accommodate the protection of the frontage tree, would result in vehicles accessing the proposed dwelling almost facing the front wall of the host property as they enter the site. This raises the potential for noise and light disturbance in relation to the front windows of no.107.
19. The appellant has drawn my attention to a number of approved developments elsewhere involving back-land residential developments with access driveways adjacent to neighbouring properties. However, none of these cases are identical to the appeal scheme in respect of the exact site circumstances and land levels. In any case, I must consider the appeal proposal on its individual planning merits, and within the context of the appeal proposal in relation to the immediate surrounding properties. The existence of other driveways serving tandem development in other locations does not justify the harm that I have found for the reasons set out above.
20. The appeal site adjoins the rear gardens of nos. 9 and 11 Francis Way, which are sited at a lower ground level. No.11 is set further forward within its plot and has a large and long back garden, of which only part abuts the appeal site. No.9, however, is set further back into its plot and has an L-shaped rear garden which wraps around the appeal site. During my site visit, I observed that the part of the rear garden immediately adjacent to the appeal site appears well-used as an external amenity area, including a large paved patio area immediately to the rear of the house with table and chairs, various raised beds, a greenhouse, and further garden seating and domestic paraphernalia evidencing the well-used nature of this part of the site. The rear elevation of no.9 includes living room, dining room, kitchen and garden room windows having a direct outlook onto this part of the garden. Although not shown on the planning application drawings, the garage of no.9 has been extended to provide a utility room/store leading directly onto this part of the garden.
21. The ground levels of the appeal site drop eastwards towards the rear of the site, and this continues into the rear garden of no.9, so that dwelling and its rear patio are at a significantly lower ground level than the appeal site. The application drawings do not include a full cross-section drawing through the appeal site and no.9. However, the information provided on the submitted drawings appears to indicate that the land level will be raised at the eastern end of the new dwelling, and that this would result in a ground floor level which

- would be similar to that of the roof height of the garage of no.9, having regard to the submitted topographic survey.
22. Accordingly, I find that the proposed combination of the elevated height of the new dwelling relative to no.9, its wide span gable end facing that property, and its proximity to the eastern side boundary, would have an oppressive and overbearing impact on the outlook of the aforementioned rear elevation and garden of no.9. It would also give rise to potential overlooking to no.9 from the side elevation bedroom windows.
23. Although set further away from the boundary with no.9 than the eastern side of the new dwelling, its front elevation would also face that property's garden due to the L-shaped nature of the garden. This would increase the harmful impact on the outlook from no.9. In addition, the impact on that property would be exacerbated by the proposed positioning of the parking and turning area to the front of the new dwelling, which would give rise to additional noise and disturbance impacts resulting from the vehicle movements associated with the new dwelling, similar to the aforementioned impacts on the rear garden of 109 BAS.
24. In the absence of detailed cross-section drawings, which include the site of no.9, and detailed boundary treatment and landscaping proposals, I cannot be assured that the aforementioned harmful impacts on the living condition of the occupiers of no.9 could be satisfactorily mitigated. Whilst there is some mature landscaping adjacent to the boundary, this does not currently provide complete screening of the appeal site from no.9 and whilst the appellant states that this will be retained and that additional landscaping can be secured by means of a condition, landscaping is not for determination under this current application.
25. The appellant asserts that the appeal proposal would have a less harmful impact on the living conditions of neighbouring property occupiers with regard to the issue of overbearing impact than that of an outbuilding which could potentially be built on the appeal site under permitted development rights in accordance with The Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).
26. However, there is limited evidence to suggest that the impacts described by the appellant would come to pass. No formal application for a certificate of lawfulness with respect to an outbuilding at the appeal site has been determined by the Council prior to the appeal planning application, and the determination of what could potentially be built under permitted development rights is not a matter for me to decide within the context of an appeal made under Section 78 of the Act. Therefore, this consideration has minimal weight in my decision.
27. For the above reasons, I therefore conclude that the proposed development fails to satisfactorily demonstrate that there would be no material harm to the living conditions of the occupiers of nos. 107 and 109 Bouverie Avenue South in respect of noise and disturbance, and to the occupiers of 9 Francis Way having regard to noise and disturbance, privacy and outlook impacts. As such, the proposal would fail to accord with WCS Policy 57, which amongst other things, seeks to ensure that new development has regard to the compatibility of adjoining buildings and uses and impact on the amenities of existing occupants. This is generally consistent with 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 (paragraph 127).

Living conditions of future occupiers

28. The Council is concerned that, due to the proposed siting of the new dwelling in relation to surrounding properties, the occupiers of the appeal proposal would experience inadequate levels of privacy. Notwithstanding that the site is surrounded by two storey properties and that the land level of the appeal site is lower than that of neighbouring properties in BAS, I find that the separation distances between the new bungalow and the neighbouring properties in BAS to be such that the new dwelling would not experience harmful overlooking from the neighbouring dwellings.
29. For the above reason, I therefore conclude that the proposed development would provide appropriate living conditions for future occupants, with particular reference to privacy. In this respect, therefore, the appeal scheme accords with WCS Policy 57, in so far as it aims to ensure that new development has regard to the compatibility of adjoining buildings and uses and ensures that appropriate levels of amenity are achievable within the development itself, including the consideration of privacy. This is generally consistent with 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 (paragraph 127).

Other Matters

30. The Council accepts that it is unable to demonstrate a five year supply of deliverable housing sites in respect of the South Wiltshire Housing Market Area (HMA). It considers that it has a 4.45 year supply and this figure is not disputed by the appellant.
31. Paragraph 11 of the Framework applies, which states that relevant policies for the supply of housing should not be considered up to date where a five year housing land supply cannot be demonstrated. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance, including designated heritage assets, provides a clear reason for refusing the development proposed, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate that development should be restricted.
32. Paragraph 8 of the Framework defines the three dimensions of sustainable development as performing economic, social and environmental objectives. When judged against some of the core planning principles of the Framework, the appeal proposal would perform well in that it would be in an urban area where access to facilities is likely to be greatest. Also, 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.
33. However, a good standard of residential amenity is also a key aspect of sustainable development. The harm I have identified to the living conditions of the occupiers of neighbouring properties would be significant. As a result, the social role of sustainable development would not be achieved. Whilst the

Framework encourages the effective use of land in meeting the need for homes, including giving substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, this is not unqualified. The provision of one additional unit would make little meaningful difference, and would not address or outweigh the aforementioned harm that I have identified to the living conditions of the occupiers of neighbouring properties.

34. Therefore, 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

35. For the reasons given above, I conclude that the appeal should be dismissed.

S Leonard

INSPECTOR