



Appeal Decision

Site visit made on 2 February 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/Y3940/W/20/3261051

406C The Spa, Bowerhill, Wiltshire SN12 6QL

- 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 Miss Amy Hallett against the decision of Wiltshire Council.
 - The application Ref 20/04259/FUL, dated 23 May 2020, was refused by notice dated 8 October 2020.
 - The development proposed is the construction of two, two bedroom bungalows and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council have confirmed that they made their determination in relation to drawings numbered 162/101 Rev b and 162/102 Rev b which removed a 1800mm high fence originally shown from the boundary wall beside the road. I have determined the appeal on the basis of these plans. Both parties refer to the proposed bungalows as Units A and B. Notwithstanding that the submitted plans do not label the proposed bungalows, I have understood this to mean that Unit A would be the proposed northerly unit and Unit B the southerly one. I have used these references in my determination.

Main Issue

3. In the single reason for refusal on the decision notice the Council refers to the built form and layout resulting in a cramped inappropriate form of development. However, having regard to the Council's appeal statement, officer report and remainder of the refusal reason, it is reasonably clear that these are mentioned insofar as they relate to their impact on the living conditions of future occupiers rather than wider concerns regarding the impact on the character and appearance of the area.
4. On that basis, the main issue is the effect of the proposal on the living conditions of future occupants having particular regard to overshadowing from trees.

Reasons

Living conditions

5. Core Policy 57 (CP57) of the Wiltshire Core Strategy, January 2015 (CS) requires a high standard of design for all new development. Amongst the

necessary criteria listed is reference to ensuring that appropriate levels of amenity are achievable within the development itself, including the consideration of overshadowing. This accords with paragraph 127(f) of the National Planning Policy Framework (the Framework) which stipulates that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

6. The proposal would introduce two semi-detached bungalows onto part of the garden of 406C The Spa. There is no dispute between the parties that the proposal would provide sufficient garden space for both proposed bungalows. Essentially the parties disagree whether suitable living conditions would be achieved for Unit B, particularly in terms of the impact from overshadowing from trees adjacent to the site.
7. There are mature trees along the southern boundary lining the driveway to an adjacent property which the Council estimates to be approximately 7-9 metres in height. My observations of the trees were that some specimens achieved a greater height than this. The combination of the proximity, height and position of these trees broadly south of the garden area for Unit B would cause significant overshadowing during large parts of the day. Notwithstanding that most of the trees are deciduous, they would be in leaf in spring, summer and warmer parts of autumn which would coincide with seasons during which future residents would normally seek to enjoy their gardens more intensively including for sitting out and cultivation of plants. Although by comparison, the extent of the impact in winter would not be as marked, the presence of the tree trunks and branches when combined with the generally lower height of the sun in the sky, would still be likely to cast notable areas of the garden in shade in sunny conditions.
8. Overall, based on the information provided and from my own observations, the extent of overshadowing would be to such a degree that it would inhibit opportunities to sit out in sunny conditions and to dry washing. It would also restrict the range of planting that might be successful within the garden. The areas most affected by overshadowing would be the most usable and private parts of the garden space shown on the layout for Unit B. This would exacerbate the adverse impact on the living conditions of the occupants of that dwelling. The modest size and configuration of the garden space for Unit B would provide limited other opportunities for sitting out. Whilst it would be possible to use space to the front of the bungalow, this would be situated close to parked cars, would not be private and is less well related to the internal living/dining area shown on the layout. Therefore, it would not fully overcome my concerns.
9. Taking these factors together, this would unacceptably compromise the enjoyment of the garden, and therefore, the living conditions of future residents of Unit B. It follows that it would fall short of a high standard of amenity as referenced in the Framework.
10. The Council raises concerns regarding internal light levels and considers that the rear living/dining area of Unit B would be most affected by overshadowing. However, the modestly sized room would be served by a large area of glazing facing south east in addition to a secondary window facing southwards. There is little substantive evidence before me to show that these would be insufficient to provide reasonable internal light levels for future occupants.

11. My attention is drawn to planning permissions that exist at the site. Firstly, in relation to a detached bungalow¹ and secondly, in relation to the sub-division of an extended No.406C into two dwellings². Should the appeal proposal not succeed, it is likely that the approved detached bungalow would be constructed. Furthermore, the sub-division and extension to 406C would be likely to occur in any event. As such, the approval for a detached bungalow represents a fall-back position which is material to my decision. Nevertheless, as the footprint of the approved dwelling shown in 18/03329/REM is smaller than the combined footprint of Units A and B, it would have a considerably larger rear garden space than that attributed to either Unit A or B in the scheme before me. Hence, future occupants of that development would have a larger garden and consequently, increased opportunities for sitting out, planting or other garden activity as it would include areas less affected by the overshadowing from trees along the southern boundary. Therefore, the fall-back position would not result in similar or greater harm and as such, would not count in favour of allowing the appeal proposal.
12. The appellant refers to other developments approved by the Council which she considers illustrate that front gardens or unconventional garden arrangements have been considered acceptable³. She also points to a bungalow approved with a smaller garden⁴. However, based on the information provided, none of the garden areas approved appear to have a similar relationship with established trees such that a similar level of overshadowing was likely to occur. Therefore, the circumstances were notably different and consequently, these examples attract little weight. In any event, I have determined the appeal proposal on its own merits.
13. In support of the proposal the appellant points out that the use of front gardens may encourage social engagement and cites the behaviour of residents in the village of Broughton Gifford during a lockdown period due to the Covid-19 pandemic. Be that as it may, the anecdotal evidence suggests that this was a choice made by some residents in specific circumstances, rather than because they had no alternative suitable garden area available. It is therefore of little weight.
14. It is highlighted that the appellant could apply for permission for a different proposal at the appeal site with a smaller footprint, for example a chalet style bungalow. Notwithstanding that, I have made my determination in relation to the submitted plans. The ability to apply for other proposals is of little weight in the consideration of the merits of the particular scheme before me.
15. Accordingly, I find that the proposal would have an unacceptable impact upon the living conditions of the future occupiers of Unit B due to the extent of overshadowing from adjacent trees to the garden area. Therefore, it would fail to achieve a high standard of design as required by CP57 of the CS.
16. The Council also refers to Core Policy 2 of the CS on the decision notice. This is a strategic policy which sets out the delivery strategy for development in Wiltshire. Given the broad terms of the policy, I do not find that the details of

¹ Planning references 17/01107/OUT & 18/03329/REM

² Planning reference 19/10934/FUL

³ Reference 20/01494/F Appendix V, Appellant's Appeal Statement; 15/12362/FUL, Appendix U, Appellant's Appeal Statement (referred to as 15/12363/FUL in Appellant's final comments).

⁴ Rear of 46 Greenway Lane, Chippenham, Appendix R, Appellant's Appeal Statement

the modest scheme before me would directly conflict with the general thrust of the delivery strategy.

Other matters

17. The appellant considers that the behaviour of the Council during the planning application lacked impartiality and was inconsistent. However, these are matters which lie outside of the scope of my determination which is made on the planning merits of the proposal.
18. She further raises concerns that in discussion during the planning application process, the Council relied upon guidelines in Building for Life 12 when it is not mentioned in the development plan nor supplementary planning guidance produced by the Council. Be that as it may, it is not mentioned in the refusal reason on the decision notice, nor does it feature heavily in the relevant part of the Council's officer report. Therefore, consistent with the approach of the Inspector in the appeal decision⁵ highlighted, it has not informed my assessment of the planning merits of the appeal scheme.
19. Notwithstanding the submission of a draft head of terms and reference to a potential planning obligation to restrict the occupation of the proposed development, no completed obligation is before me for consideration. Neither am I provided with evidence to indicate that an obligation is necessary having regard to the statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010 (as amended). As such, this is not a matter that would lead me to a different view.
20. There are four sets of Grade II listed buildings at The Spa⁶. The appeal site would be seen in wider views within the context of those buildings and therefore, forms part of their wider settings. I am required⁷ to give special attention to the desirability of protecting the setting of listed buildings. The proposal would be set to the side of No. 406C, within a context that has existing and consented bungalows. Furthermore, the mature tree belt along the southern boundary screens and separates the site from Nos. 407 and 408. Therefore, in broad terms it would not materially harm the setting of the designated heritage assets. Whilst I note that the parties disagree in relation to the specific colour of render that might be suitable in the event of an approval, the detailed finish is a matter that could otherwise be controlled by condition. In light of my other substantive concerns in this case, there is no need for me to make a finding on this point as it is not determinative.

Planning balance and conclusion

21. The Council cannot demonstrate a five year supply of deliverable housing sites. The most up to date Housing Land Supply Statement published in December 2020 refers to a 4.56 years' supply of housing land. In these circumstances footnote 7 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. It is not shown that any of the Framework policies in footnote 6 provide a clear reason for refusing the proposal. Consequently, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

⁵ Reference APP/Y3940/W/17/3185107, Appendix N, Appellant's Appeal Statement

⁶ Nos 399, 400, 401, 402, 403, 404, 407 and 408 (The Grove).

⁷ Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990

22. For the reasons outlined the proposal would fall short of achieving a high standard of amenity for future users as stipulated in paragraph 127(f) of the Framework. Moreover, the proposal would conflict with the requirement to meet a high standard of design in CP57 of the CS and paragraph 124 of the Framework confirms that good design is a key aspect of sustainable development. Consequently, significant weight is given to the harm arising from the conflict with the development plan in this regard.
23. The proposal would provide two bungalows built to current standards with good accessibility which would contribute towards housing provision in an area of unmet need. As single storey accommodation they would be particularly suited for future occupants who may have restricted mobility. Although not affordable housing as defined in the Framework, they would provide modest accommodation which, relative to larger houses in the area, is likely to be reflected in their price. These factors would diversify the available housing stock. There would be economic benefits associated with the construction of the building and spending activity of the future occupants. Even so, the extent of the benefits accruing from the proposal would be limited, especially given that there is a fall-back position for a single detached bungalow that would provide broadly similar benefits. Therefore, overall, they attract limited weight.
24. The adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.
25. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁸. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁸ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.