The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2021

Appeal Ref: APP/Y3940/W/20/3259845
Brunel Court, Elcot Lane, Marlborough, Wiltshire SN8 2AZ

- 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 A Armstrong of Amcar Homes Ltd against the decision of Wiltshire Council.
- The application Ref 20/00623/FUL, dated 21 January 2020, was refused by notice dated 21 August 2020.
- The development proposed is described as 're-development involving demolition, change of use and erection of 5, two and three bedroom dwellings and associated works'.

Decision

1. The appeal is dismissed.

Procedural Matters

2. During the planning application revised plans were submitted amending the proposal from six to five dwellings. Accordingly, I have taken the description of development from the decision notice and appeal form as these reflect the revised scheme upon which the Council made its decision, rather than the original description given on the planning application form.

3. The Council's decision notice showed two reasons for refusal. The latter referred to insufficient information being provided regarding surface water drainage. The Council have subsequently confirmed in their statement of case[1] that this is a matter that could be addressed by a condition to require the submission and agreement of a drainage scheme, and I see no reason to disagree. Consequently, the second reason for refusal falls away.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of nearby residents having particular regard to privacy.

Reasons

Living conditions

5. The existing commercial building on the appeal site is single storey and extends approximately halfway across the width of the rear boundary of Willow Cottage. Hence, there are no upper floor windows within the appeal site facing towards

[1] Paragraph 2.13

the rear garden of Willow Cottage. The proposal would introduce a considerable number of upper floor front windows that would serve bedrooms within plots 2-5. These would not be far from the rear boundary of Willow Cottage and orientated directly towards the rear garden. Aside from the proposed gap between the two groups of dwellings, these windows would form a line across the width of the boundary that would significantly increase the degree of surveillance of the rear garden by allowing intrusive views from four separate households.

6. This would be considerably at odds with the degree of privacy the occupants of Willow Cottage might reasonably anticipate when seeking to use the more private area of their grounds. I was able to observe the rear garden at my site visit and noted that it included paved areas close to the back of the dwelling likely to be used for sitting out. As such the proposal would result in an unreasonable level of overlooking that would significantly and unacceptably harm the privacy of the occupants of Willow Cottage.

7. In addition, plots 3-5 would each have a rear facing first floor bedroom window situated relatively close to the rear boundary that would allow for views towards the rear gardens of 58 and 59 Barrow Close. Notwithstanding the reduction of the existing ground levels shown, the remaining relative fall in levels illustrated on the site sections provided[2] would exacerbate the impact. In combination these factors would result in unacceptable overlooking to the private rear garden areas of nos 58 and 59 that would compromise the living conditions of the respective occupants.

8. For these reasons the proposal would fail to achieve a high standard of amenity for existing users as required by paragraph 127 f) of the National Planning Policy Framework (the Framework).

9. The configuration of plots 1-5 would be adequate to prevent unreasonable levels of inter-visibility between the windows of the proposed dwellings and those in properties behind in Barrow Close. This would be largely due to the avoidance of the direct alignment of windows together with the separation distances maintained between the respective buildings. Furthermore, the use of rooflights placed 1.7 metres in height from floor level in the first floor rear elevations of proposed plots 1 and 2 would prevent unreasonable overlooking from those dwellings to properties and gardens in Barrow Close. Nevertheless, this would not address, nor overcome the harm to privacy I have already identified above.

10. There is little evidence to support the appellant's assertion that future occupiers would spend most of their time in ground floor rooms during daylight hours rather than looking outwards from upper floor bedrooms. There would be no guarantee that bedrooms would be occupied to a lesser extent during the day, and it would not be unusual to have a desk in a bedroom for work or study purposes. In any event, whether occupied or not, the perception of overlooking would remain given the presence of the windows and this would contribute to the harm to the living conditions identified.

11. The limited front and rear garden space provided for the proposed dwellings and the proximity of principal window to those areas would be unlikely to support planting that could provide a significant screen. Reference is made to a

[2] Drawing Reference 2376 165 Rev B

3.5 metre high conifer hedgerow to the rear of 59 and 60 Barrow Close and two trees to the rear of no.58. In addition, the plans show a high conifer hedgerow and tree in the grounds of Willow Cottage. However, representations received indicate that the latter have since been removed, which was consistent with my observations of the grounds of Willow Cottage. Therefore, it is not shown that these features are within the control of the appellant, and most appear not to be. The subsequent removal of some reinforces that their continued presence or height cannot be secured or managed as part of the development proposed. Accordingly, little reliance can be placed on them as means to mitigate the impact of the proposal. Consequently, they attract little weight. In any event, it is not shown that they would fully overcome the extent of harm identified.

12. The appellant considers that some overlooking between neighbouring dwellings is inevitable in urban situations. Be that as it may, I am required to consider the merits of the particular proposal before me and have identified an unacceptable degree of harm.

13. Accordingly, I find that the proposal would result in unacceptable harm to the living conditions of nearby residents as a result of overlooking. Therefore, it would be contrary to Core Policy 57 (CP57) of the Wiltshire Core Strategy, January 2015 (CS). This requires a high standard of design in all new developments, including giving regard to the impact on the privacy of existing occupants.

Planning balance and conclusion

14. Although a figure is not specified, the appellant indicates that the Council cannot demonstrate a five year supply of deliverable housing sites and the Council does not dispute this. 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. The evidence does not show that the site is within a protected area identified in footnote 6 to paragraph 11. 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.

15. Integral to achieving well-designed places, the Framework expects development to achieve a high standard of amenity for existing users, and CP57 is consistent with this. The degree of harm identified that would result to the living conditions of nearby residents, and consequent conflict with national and local policy in this respect, attracts significant weight.

16. The proposal would provide five additional dwellings in a reasonably accessible location where there is unmet need, thereby boosting overall supply. There would be associated economic benefits arising from the construction and activity of the future occupants. The proposal would make efficient use of previously developed land which is encouraged by the Framework. Moreover, paragraph 123 of the Framework emphasises that where there is an existing shortage of land to meet identified housing needs it is especially important that developments make optimal use of the potential of each site.

17. Nevertheless, it does not suggest that this objective has paramountcy over other requirements in the Framework to achieve well-designed places. Paragraph 122 e) confirms this must be taken into account in achieving

appropriate densities. Moreover, there is little before me to support the assertion that a development for fewer dwellings at the site would be unviable. Overall, the benefits of providing five dwellings would be modest and therefore, the benefits attract moderate weight.

18. Although the proposal may be policy compliant in relation to other planning matters brought to my attention, as they address requirements of the development plan, they would not amount to benefits. As such, they are neutral factors in the overall balance.

19. Consequently, the adverse impacts on the living conditions of existing residents 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.

20. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise[3]. 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

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