



Appeal Decision

Site visit made on 29 January 2021

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10TH MAY 2021

Appeal Ref: APP/U3935/W/20/3264152

Land at 1 South View Cottages, The Marsh, Wanborough, Swindon SN4 0AR

- 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 L Averies against the decision of Swindon Borough Council.
 - The application Ref S/20/0274/CHHO, dated 9 March 2020, was refused by notice dated 17 July 2020.
 - The development proposed is the erection of a three-bedroom house and detached garage.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a three-bedroom house and detached garage on land at 1 South View Cottages, The Marsh, Wanborough, Swindon SN4 0AR in accordance with the terms of the application reference S/20/0274/CHHO, dated 9 March 2020, subject to the conditions set out in the schedule attached to this decision.

Procedural Matters

2. For the reasons set out later in this decision, conditions are considered necessary in relation to levels, parking provision, vision splays and hard landscaping. However, the list of suggested conditions provided by the Council is not considered to be adequate in this regard. As such, the main parties were provided with the text of conditions relating to these matters and were asked for their comments. I have had regard to the responses received in reaching my decision.

Main Issues

3. In addition to other matters, the first reason for refusal refers to the location of the development being 'outside the rural settlement boundary'. Rural settlements are referred to in Policy SD2: The Sustainable Development Strategy of the Swindon Borough Local Plan 2026, adopted March 2015 (SBLP). I have been provided with a copy of that policy. In relation to this, I note the appellant's cometary at paragraph 3.2 of his statement of case, where he states that 'the Council have accepted that there are other material considerations that outweigh this policy conflict, and therefore no objection has been raised to the principle of a new dwelling in this location'.
4. Whilst I acknowledge that neither reason for refusal refers to Policy SD2, they do include reference to the location of the development in relation to the rural settlement boundary. Policy SD2 is before me and both parties identify this as

a policy relevant to the determination of the appeal. Accordingly, I have considered the location of the development as a main issue in this case, along with other material considerations, which include the provisions of paragraph 11 d) and footnote 7 of the National Planning Policy Framework (the Framework).

5. Having regard to the above, the main issues are as follows:

- Whether the location of the proposed development would be acceptable, having regard to the local and national planning policies on the location of housing;
- The effect of the development on the character and appearance of the site and the surrounding area;
- The effect of the development on the living conditions of nearby occupiers; and
- Whether any development plan conflict and harm arising would be outweighed by other material considerations, with particular regard to the Framework and the benefits of the scheme.

Reasons

Location

6. The parties agree that the appeal site falls outside the rural settlement boundaries, as noted in the first reason for refusal. Policy SD2 of the SBLP informs that development in this location would only be permitted in three circumstances. These are, in summary, where local needs have been identified through a Neighbourhood Plan or Neighbourhood Development Order; where the development supports the expansion of tourist and visitor facilities; or it is in accordance with other policies in this Plan permitting specific development in the countryside. This approach to rural housing is supported in the Framework.
7. There is no dispute between the parties that the proposal fails to satisfy any of the circumstances permitting development in this location, as listed in Policy SD2. The development would not, therefore, accord with the Policy. However, having regard to the evidence before me, the only harm that would result from this would be to the Council's development strategy. Nevertheless, this leads me to conclude that the location of the proposed development would be unacceptable.

Character and Appearance

8. The appeal site is on the edge of a group of dwellings off The Marsh. Within the group is a mix of architectural styles and ages. There are large detached dwellings set off the highway and within spacious plots in the area east of the appeal site. Keepers Cottage, adjacent to the appeal site, is typical of this. Further along The Marsh is a cluster of smaller detached and semi-detached properties that sit closer to the carriageway, some of which the Council suggest are set within more linear plots. Although not in this cluster, Nos 1 and 2 South View Cottage, adjacent to the appeal site, are typical of this type of property. Despite this group of dwellings, the area around the appeal site retains a rural character and The Marsh serves as a typical rural lane.

9. The appeal site occupies a large portion of the garden area serving No 1 South View Cottage. This garden is linear and shares a side boundary with The Marsh. A detached dwelling is proposed within this garden area, along with a garage and a parking bay to serve the new dwelling and two parking spaces to serve No 1. The new dwelling and garage would have a simple design and their appearance would not be out of accord with the mix of building styles and ages in the wider group. Indeed, the Council acknowledge that the development would 'reflect and contribute to the house types in the area'.
10. In addition, the proposed dwelling is modest, the scale and mass of which is in keeping with the adjoining semi-detached pair and other smaller dwellings within the close vicinity of the site. The Council suggest that the prominent location of the dwelling and position in the plot would erode the rural character of the area. However, in my judgement the prominent position of the dwelling, close to the edge of the carriageway, is typical of dwellings elsewhere in the wider group, including the adjoining dwellings at South View Cottages. The highway facing side gable is also found in the area. In this regard the development would complement the character of this rural settlement.
11. I acknowledge that the garden area serving the new dwelling and that remaining for No 1 would be limited. Indeed, these garden areas would be very small in comparison with those serving the adjoining dwellings on St Kathrines Place. The new buildings, parking areas and means of access would introduce development to this fairly undeveloped garden area. In this regard the Council suggest the scheme would result in the overdevelopment of the plot. However, smaller garden areas are not unusual in the roadside dwellings in the area and the close relationship between the new dwelling and neighbouring properties is also typical, as seen in the cluster of dwellings further along The Marsh. The character of the site would change, but the result would not be out of accord with the grain of development on this side of The Marsh or character of the surrounding area in general.
12. The development would be contained within the existing group of dwellings along The Marsh. Whilst it would be to the rear of South View Cottages, I do not consider it to be a form of 'backland' development, as suggested by the Council, particularly having regard to the expanse of boundary of the site shared with the highway. As an infill plot, it does not, in my view, make a significant contribution to the visual separation between the adjoining dwellings at South View Cottages and Keepers Cottage. To my mind the visual separation between buildings would be retained, helped by the sizable garden serving Keepers Cottage. In this regard the scheme would not result in an inappropriate form of infill development.
13. The scheme would see the loss of some vegetation from within the site and along the roadside boundary. I agree that this vegetation contributes to the pleasant character of the area and its loss would result in some harm. However, I note the planting proposed and the landscaping condition suggested by the Council. In my view, this would mitigate the loss of vegetation on site and ensure the development contributes to the rural character of the area.
14. Overall, having regard to the context of the site, in particular the grain of development and the mix of housing types and ages, the development would have an acceptable effect on the character and appearance of the site and the surrounding area. Having assessed the development against the design

principles set out in SBLP Policy DE1: High Quality Design, I find that the development would achieve the objectives of sustainable development through high quality design and place-making principles. The development would positively respond to the scale, density, massing, landscape, layout, materials and access of its neighbouring properties. It would also conserve the character, diversity and local distinctiveness of the surrounding landscape. For these reasons the development accords with SBLP Policy EN5: Landscape Character and Historic Landscape and The Swindon Residential Design Guide – Supplementary Planning Document dated June 2016 (SRDG).

Living Conditions

15. Page 54 of the SRDG sets out minimum separation distances between non-mixed use development and states that these 'help to relieve the impact of development for existing residents and ensure good solar access to rooms and gardens all year round'. The side gable of the proposed dwelling would face the rear elevation of the property identified on the location plan as Keepers Cottage. The Council indicate that the distance between the two would be some 13.5 metres, which is greater than the minimum separation distance of 12 metres set out in the SRDG. Nevertheless, it is suggested that the development would have an overbearing impact and dominate the outlook from Keepers Cottage.
16. I acknowledge that the SRDG states that 'there may be exceptional circumstances where the character of an existing area requires a different separation response'¹, and that this might apply to circumstances where achieving the recommended minimum might not be sufficient. In this regard the Council suggest that the existing pattern of development is loosely knit, with generous plot sizes, and a spacious character between dwellings. Whilst I agree that this description applies to the recent St Kathrines Place development, it does not apply to all built development within the close vicinity of the site. Indeed, I have identified earlier the close relationship of dwellings found at South View Cottages and further along The Marsh. The separation distance between the proposed dwelling and Keepers Cottage would not, therefore, be out of character. Having regard to the pattern of development in the area and based on the evidence before me, I have no reason to apply minimum separation distances in this case that would be greater than those specified in the SRDG.
17. Notwithstanding the above, I acknowledge that, whilst the single storey garage would have a minimal effect on the outlook from Keepers Cottage, at two storeys the new dwelling would be highly visible. It would, therefore, affect the outlook from this neighbouring dwelling, which currently only has a view of the boundary enclosure and vegetation on the appeal site. However, I do not consider the height of the dwelling to be excessive, particularly if a condition is imposed to ensure the slab level is low within the site, and its side gable would only be present along a short section of the much wider rear boundary of Keepers Cottage. As such, and having regard to the extent of garden serving Keepers Cottage, in my judgement the development would not be overbearing and it would not have an unacceptable effect on the outlook from this neighbouring dwelling. In reaching this conclusion I have found no conflict with the guidance on outlook in the SRDG².

¹ Paragraph 6.15 of the SRDG.

² Page 55 of the SRDG.

18. In addition to the above, having regard to the location of the proposed dwelling in relation to Keepers Cottage, the degree of overshadowing of its garden caused by the development would not be so great as to render the development unacceptable, particularly as this would only occur in the late afternoon and early evening. Furthermore, it is unlikely to affect the vast majority of the garden serving that property, the width of which is greater than the total length of the linear appeal site. I also note that there is no suggestion that the development would not comply with the guidance on daylight, sunlight & overshadowing set out in SRDG³, which includes the requirement for at least 50% of each private amenity space to receive a minimum of 2 hours sunlight on the Spring equinox.
19. I acknowledge the concerns raised about loss of privacy for adjoining occupiers at Keepers Cottage. However, in view of the orientation of the dwelling, any views from first floor windows in the new dwelling would be limited. The Council was satisfied that the orientation and design of the proposal would ensure that the privacy of this neighbour would not be unacceptably harmed. I see no reason to come to a different view.
20. Having regard to my findings above, I conclude that the effect the development would have on the living conditions of nearby occupiers would not be so adverse as to render the development unacceptable as a whole. Again, I have assessed the development against the design principles set out in SBLP Policy DE1: High Quality Design and find no conflict with this Policy, particularly the principle of amenity in respect of light, privacy, outlook and space. Furthermore, and as already noted above, the development would not conflict with any of the guidance set out in SRGD.

Other Material Considerations

- Housing Land Supply and Paragraph 11b of the Framework

21. It is common ground that the Council are unable to demonstrate that it has a 5 year supply of housing land, as required by paragraph 67 of the Framework. The provisions of paragraph 11 d) and footnote 7 are, therefore, engaged. I have concluded that the only policy that would stand in the way of the dwelling proposed in this case, and against which I have identified conflict, is SBLP Policy SD2. Whilst I consider this Policy to be in accordance with the Framework, as the Council cannot demonstrate a five year supply of deliverable housing sites, it is considered to be out-of-date for the purposes of paragraph 11(d). I must, therefore, weigh the benefits of the development proposed against its adverse impacts, assessing these against the policies in the Framework.
22. The provision of a single dwelling would make a small contribution towards housing supply, with associated social and economic benefits. It would also accord with the Framework's support for windfall sites⁴ which advises that great weight should be given to the benefits of using suitable sites within existing settlements. In this regard the appellant suggests that, being a small site, it is more likely to be completed within five years.
23. Whilst I have identified some harm in this case, on balance this does not significantly and demonstrably outweigh the benefits of the scheme, when

³ Page 53 of the SRDG.

⁴ Paragraph 68 of the Framework.

assessed against the policies in the Framework taken as a whole. In these circumstances paragraph 11 d) advises that planning permission should be granted. This is a material consideration in the determination of this appeal.

- Other Matters

24. I note the representations with regard to highway safety, parking provision within the site, and the lack of a pedestrian footway on this section of The Marsh. I have had regard to the comprehensive response from the Council's highway engineer, who considered the revised scheme submitted in response to his initial objections. Having paid particular regard to the proposed parking provision and the visibility splays for the two points of access, he concludes that he has no objection to the scheme. Whilst I acknowledge the concerns of local residents who are familiar with this section of The Marsh, based on the evidence before me I am unable to conclude that the effect of the development upon pedestrian and highway safety is a reason to withhold planning permission.
25. Similarly, whilst I acknowledge the concerns raised with regard to flooding, I note that the Council have no objection to the development in this regard. The evidence before me does not lead me to a different conclusion.

Conditions

26. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance. I have also added a number of conditions, as advised earlier in this decision, and sought the parties view on these.
27. In addition to the statutory time limit, a condition specifying the plans is necessary to provide certainty. Whilst some materials details have been provided for the proposed dwelling and garage, these do not specify some colours. Furthermore, the details of other external facing materials, such as hard surfacing and means of enclosure, have not been specified. Details of all materials are necessary in the interests of good design and the environment. Accordingly, a materials condition and landscaping condition require further details of all external materials.
28. The landscaping of the site is necessary to mitigate the loss of existing vegetation that would result from the development. Whilst some details are shown on the layout plan, it is necessary to require further details to include such matters as tree species and size, as well as the planting specification of the new native hedges.
29. On site I noted that there is a slight level change across the site, towards the highway. As such, details of the existing and proposed site and slab level are necessary in the interests of the living conditions of adjoining residents and to protect the character and appearance of the area.
30. Completion and retention of both means of access, the associated vision splays and on-site parking prior to the occupation of the development is necessary in the interests of highway safety and to ensure there would be sufficient provision for the occupiers of the development and 1 South View Cottages.

The condition relating to the garage door is also necessary to ensure the retention of sufficient on-site parking provision.

31. Paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. I see no reason to remove such rights in respect of new window or door openings in the new dwelling, other than in the side elevation facing Keepers Cottage. Such controls would be necessary to protect the privacy of the occupiers of this adjoining dwelling. For the same reason, and in the interests of protecting the character and appearance of the area, the extension or enlargement of the new dwelling, as well as additions or alterations to its roof should be subject to scrutiny by the Council. I have, therefore, imposed conditions accordingly.
32. Having regard to the information before me, I have found no reason to conclude that the construction of a single dwelling would give rise to noise and disturbance at unsociable hours. Accordingly, I do not consider the condition restricting the hours of construction to be necessary in this case.

Planning Balance

33. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
34. I have found that the development fails to accord with the development plan as it would result in development that would not accord with the Council's development strategy. However, for the reasons given earlier in this decision I have concluded that the Framework's presumption in favour of sustainable development as defined in paragraph 11 d) applies in this case. This is a material consideration of sufficient weight to indicate that the appeal should be determined otherwise than in accordance with the development plan.

Overall Conclusion

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

J Moss

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiry of three years from the date of this permission.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the following plans:
 - M20-006 Drawing No 10 – Location Plan
 - M20-006 Drawing No 11 Revision E – Proposed Site Plan
 - M20-006 Drawing No 12 – Proposed New Dwelling
3. No development shall commence until details of the existing site levels and the proposed slab level of the buildings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
4. Notwithstanding the submitted details, no development shall commence until a scheme of all hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of:
 - all hard surfacing, which shall either be constructed using porous materials or shall drain to a permeable or porous area or surface within the site;
 - existing and proposed ground levels on the site;
 - all means of enclosure;
 - all existing trees, hedgerows and other planting, identifying those to be retained;
 - a planting specification to include numbers, density, size, species and positions of all new trees, hedges, shrubs and other plants; and
 - a programme of implementation.
5. All planting, seeding or turfing comprised in the approved details of soft landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
6. Prior to the occupation of the development hereby permitted all hard landscaping shall be completed in accordance with the approved details of hard landscaping.
7. Notwithstanding the submitted details, the development hereby permitted shall be completed in materials the details of which shall have first been submitted to and approved in writing by the Local Planning Authority.
8. Prior to the occupation of the development hereby permitted both means of access together with the associated vision splays shown on plan number M20-006 Drawing No 11 Revision E shall be laid out and completed in accordance with the approved details. The vision splays shall thereafter be retained free from obstruction above the height of 600mm.

9. Prior to the occupation of the development hereby permitted the vehicle parking including that provided within the garage shown on plan number M20-006 Drawing No 11 Revision E shall be laid out and completed in accordance with the approved details. These areas shall thereafter be retained in accordance with the approved details. The parking spaces in the north west of the site shall be used only for the parking of vehicles in connection with the dwelling hereby permitted and the parking spaces in the south east of the site shall be used only for the parking of vehicles in connection with 1 South View Cottages.
10. The garage shown on plan number M20-006 Drawing No 11 Revision E shall be completed with a vertical opening roller shutter door. Once installed the vertical opening roller shutter door shall thereafter be retained.
11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or doors shall be constructed on the north east facing elevation of the dwelling hereby permitted.
12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement or extension of the dwelling hereby permitted shall be constructed.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no addition or alteration to the roof of the dwelling hereby permitted.

**** Conditions End ****