
Appeal Decision

Site visit made on 9 November 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2021

Appeal Ref: APP/U3935/W/21/3278958

Land to the north of 162 Whitworth Road, Swindon SN25 3BJ

- 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 Colin Rogers against the decision of Swindon Borough Council.
 - The application Ref S/21/0329/RACH, dated 18 February 2021, was refused by notice dated 2 June 2021.
 - The development proposed is the erection of one house.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Government published its revised National Planning Policy Framework (the Framework) on 20 July 2021. The parties have had the opportunity to refer to the revised Framework as part of the appeal process.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area.
 - The living conditions of the occupants of 5 Toppers Close having regard to light and outlook.
 - Whether appropriate access, waste storage and parking would be provided, and;
 - If harm arises, whether this is outweighed by other material considerations.

Reasons

Character and appearance

4. The appeal site lies between Whitworth Road and Toppers Close in an established predominantly residential area. Whilst there is some variety in built form, materials and orientation, most dwellings are two storey and present their principal elevation to the road with gardens to the rear. They are arranged so that they generally conform to a building line with other houses which gives an underlying structure to the settlement pattern which aids

legibility and coherence. This results in a pleasant and ordered sub-urban layout.

5. The appeal site is a linear piece of land, served by a perpendicular access track onto Whitworth Road. It is described as amenity land on the planning application form¹, but the appellant also refers to it as vacant land, most recently used as a builder's yard². The position of the land to the rear of residences in Whitworth Road and adjacent to domestic outbuildings, together with the roughly surfaced access lane give it a low key, secondary character. As such, it has a neutral impact upon the prevailing character and appearance of the area.
6. The proposal would introduce a detached two storey dwelling orientated on an east/west axis. The appellant indicates³ that the design approach is to replicate properties within Toppers Close. Whilst this is an understandable design concept, the proposal before me would fail to successfully execute it for the following reasons.
7. Firstly, the properties in Toppers Close are arranged in short terraces or semi-detached pairs facing each other and mostly adhere to a clear building line. Advice in the Swindon Residential Design Guide, Supplementary Planning Document, June 2016 (SPD) states⁴ that proposals must ensure that established building lines that form part of an area's identity and character are maintained. However, the proposed dwelling would be detached and noticeably set back from the eastern building line. As such, it would appear adrift from the dwellings in Toppers Close.
8. This disconnection would be exacerbated by the presence of the close boarded fence with brick piers that divides the appeal side from Toppers Close. This considerable physical obstacle would prevent permeability between the dwelling and those in Toppers Close necessitating a separate access.
9. In addition, the ancillary domestic structure to the rear of 162 Whitworth Road would be closer to the principal elevation of the proposed dwelling than the existing dwellings in Toppers Close. This awkward configuration would dilute affinity with Toppers Close.
10. Furthermore, the narrow frontage of the proposed dwelling would be dominated by two car parking spaces with no room for a defined pedestrian path to the front door. Whilst the houses in Toppers Close do have car parking spaces along the frontage, my observations were that this was generally more spacious and allowed for a greater separation distance to prevent the presence of cars from becoming oppressive. The front garden areas provided a softening effect and there were legible dedicated pedestrian routes to the dwellings.
11. Whilst I acknowledge that the orientation, scale, general form and materials of the proposed dwelling would have similarities, these would not be sufficient to overcome the effects of the factors outlined. Therefore, the proposal would not read as part of Toppers Close, rather it would appear cramped and adversely at odds with its surroundings.

¹ Section 6

² Paragraph 3.1, Appellant's Appeal Statement

³ Paragraph 6.10, Appellant's Appeal Statement

⁴ Paragraph 4.11

12. Although I accept the dwelling would not be easily seen from Whitworth Road, it would be visible from Toppers Close, as well as in private views from the surrounding houses and gardens. This would exacerbate the degree of harm. In any event, the SPD⁵ advises that by its nature, backland development may be hidden from immediate public view but this does not excuse poor quality design. Furthermore, the discordant impact arising from the proposal would fall short of achieving a development that would add to the overall quality of the area as required by paragraph 130a) of the Framework.
13. Accordingly, I find that the proposal would have a harmful impact on the character and appearance of the area contrary to policy DE1 of the Swindon Borough Local Plan 2026, March 2015 (LP). This stipulates that high standards of design are required for all types of development having regard to design principles that include, amongst other matters, consideration of the context and layout of the development.

Living conditions

14. As part of high quality design, policy DE1 of the LP also requires the consideration of development on amenity, including in terms of light and outlook. Paragraph 130 f) of the Framework stipulates that planning decisions should ensure a high standard of amenity for existing and future users.
15. The side elevation of the proposed dwelling near the boundary with 5 Toppers Close would introduce significant built form close to the rear conservatory of No.5, as well as along part of the rear garden boundary. The conservatory comprises a largely glazed structure with the roof panels using a material designed to let in light, which makes it particularly sensitive to changes in light levels. It is reasonable to suppose that the occupants of No.5 would seek to spend prolonged time in the room. The level and quality of light as well as the outlook from the conservatory would be important contributors to the quality of that experience. Moreover, the occupants are more likely to use the area of the rear garden close to the conservatory more intensively, for example by sitting out to enjoy the sun.
16. In these circumstances, the proposed dwelling in such proximity to the boundary, almost due south of the conservatory and part of the rear garden would markedly reduce the levels of natural light received and cast a shadow. Moreover, the land levels at the appeal site are elevated relative to No.5 which would increase the degree of impact. The appellant contends that this would be for a short duration in the late afternoons, primarily during the winter months⁶. However, no technical evidence has been provided to substantiate this. The SPD⁷ advises that the effect of a proposal on the daylight available to adjacent dwellings should be assessed by using British Research Establishment's Site Layout Planning for Daylight and Sunlight (2011)(BRE 209). In the absence of this or other technical information to show otherwise, I consider the proposal would be likely to have a marked adverse impact on the ability of the occupants of No.5 to enjoy sunlight in their conservatory and rear garden.
17. Moreover, the side elevation of the proposed dwelling would comprise a blank brick wall⁸. The SPD advises that overbearing bland or poorly articulated

⁵ Paragraph 2.24

⁶ Paragraph 6.17 Appellant's Appeal Statement

⁷ Paragraph 6.11

⁸ Drawing number LPC50262102

elevations and walls can impact on outlook for residents⁹. The proximity of the proposed dwelling to the boundary means that the blank elevation would be apparent from the rear garden of No.5. Furthermore, given the side windows and translucent roof of the conservatory, the immediacy of the built form would have an obvious presence. This would further undermine the enjoyment of the room and rear garden and therefore, would unacceptably compromise the occupants' living conditions.

18. For these reasons, based on the evidence before me, the proposal would fall short of the high standard of amenity for existing users referred to in the Framework as well as conflict with advice in the SPD. Neither am I persuaded that a condition to require a reduction in the level of the appeal site would fully address all the concerns I have outlined.
19. Accordingly, I find that the proposal would result in unacceptable harm to the living conditions of the residents at No.5 due to a marked reduction in sunlight and an overbearing effect on their outlook. Consequently, in these respects the proposal would be contrary to policy DE1 of the LP.

Access, waste storage and parking

20. Policy TR2(b) of the LP states that development is supported where it provides appropriate access to the nature of the development. It is made explicit that safe and convenient pedestrian and cycle access should be provided.
21. Although the site may previously have been in use as a builder's yard, no evidence is provided to quantify the number of associated movements for that use or the proposed dwelling. In any event, occupants of some properties on Whitworth Road would continue to use the track to access the rear of their properties. A residential use would be likely to generate limited but regular domestic vehicular movements. It would also lead to an increase in the likelihood of pedestrians and cyclists using the access, which could include children or more vulnerable pedestrians.
22. The access track serving the proposal is of a notable length and is unlit, roughly surfaced and narrow such that the passage of two-way traffic would generally be inhibited. These characteristics make it inappropriate for pedestrians, especially those with mobility difficulties, or pushing a pram. The narrow nature of the track would make both cyclists and pedestrians feel uncomfortably exposed to the presence of traffic, even at slower speeds. This would be especially so, where vehicles had to reverse along the track to give way to on-coming traffic.
23. In addition, if vehicles occupied the parking spaces shown along the frontage of the dwelling, this would make it difficult for pedestrians and cyclists to pass in order to access the cycle parking and/or front door. Although I accept it would be possible for the occupants to move vehicles to facilitate easier passage as a responsive measure, this could hardly be described as convenient, nor a layout that functions well.
24. Taking these factors together, the arrangements would not constitute safe and convenient pedestrian and cycle access as required by policy TR2(b) of the LP. Neither would it promote walking and cycling as advocated by policy TR1(a) of

⁹ Paragraph 6.20

the LP. For similar reasons, it would fall short of the safe and suitable access for all users stipulated in paragraph 110 b) of the Framework.

25. There is no dispute between the parties that future occupants would need to carry or wheel refuse more than the recommended 30 metre distance¹⁰ to allow for kerbside collection. Whilst the approximately 55m length represents a considerable distance, had this been the only factor it would probably only pose a relatively minor inconvenience to future occupants. However, when combined with the poor surface and topography, transferring waste to the kerbside would become much more challenging especially for the less physically able. Even if refuse were infrequently collected, which cannot be guaranteed, this counts against the proposal.
26. Although the Council raises some concerns about the displacement of existing parking spaces, the appellant confirms that there are no parking spaces on the appeal site¹¹. However, I observed an area of hardstanding to the rear of 164 Whitworth Road adjacent to the garage which, if used for parking, would call into question the positioning of the proposed parking spaces as they would block access. Therefore, it is not clearly shown that the proposed layout would not interfere with these residents from accessing their off-site parking spaces. The reasonable accessibility of the site to local facilities and services, would not outweigh the concerns I have identified.
27. My attention is drawn to an appeal decision¹² allowing development which the appellant considers had a similar access arrangement. However, I am only provided with the written decision which inhibits a meaningful comparison with the proposal before me. Nevertheless, that case related to a residential annexe associated with an existing care home rather than a new dwelling. Moreover, the private drive is referred to as a 'short distance'¹³, which I do not consider would be an accurate description in this case. Given these differences, it is of limited relevance to the appeal proposal, which in any event I have determined on its own merits. Therefore, it would not lead me to find otherwise on this main issue.
28. Accordingly, I find that the proposal would fail to provide appropriate access, waste storage and parking arrangements. Therefore, it would be contrary to policies TR1 and TR2 of the LP.

Planning balance and conclusion

29. There is no dispute between the parties that the Council is unable to demonstrate a five year supply of housing land¹⁴. As I am not provided with a specific housing supply figure, for the purposes of my determination I have assumed the shortfall to be considerable.
30. In these circumstances, footnote 8 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. There is nothing otherwise before me to show that the Framework policies in footnote 7 provide a clear reason for refusing the proposal. Consequently, the presumption in favour of sustainable development in the

¹⁰ Paragraph 6.25 Appellant's Appeal Statement

¹¹ Paragraph 6.23 Appellant's Appeal Statement

¹² Reference APP/V2825/W/20/3264338, Appendix D, Appellant's Appeal Statement

¹³ Paragraph 9

¹⁴ Paragraph 29, Council's Delegated Report

Framework states that 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.

31. The proposal would provide an additional two bedroom house in a reasonably accessible area and would assist in boosting the supply and mix of housing. I am mindful that paragraph 69 of the Framework highlights the important contribution that small and medium sized sites can make to meeting the housing requirement of an area and are often built-out relatively quickly. In addition, it would make more efficient use of previously developed land for which general encouragement is given in national policy. However, for the reasons set out in relation to the main issues I am not persuaded that the appeal site would constitute 'suitable brownfield land' worthy of attracting the substantial weight referred to in paragraph 120 c) of the Framework.
32. Furthermore, there would be economic benefits associated with the construction, the activity of future occupants and the development would generate some revenue for the Council. Nevertheless, the extent of benefits accrued from a single dwelling would be limited, but assuming the shortfall in housing provision to be considerable, overall, they attract moderate weight.
33. Balanced against this is the harm to the character and appearance of the area and the living conditions of existing residents. The Framework stipulates that good design is a key aspect of sustainable development¹⁵ and that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Therefore, the conflict with the design policy in the LP is consistent with the Framework in this regard and attracts significant weight.
34. The proposal would also fall short of the high standard of amenity for existing users required by the Framework. In addition, the deficiencies associated with the access would mean that the layout would not function well, nor achieve a safe and suitable access to the site for all users. These are factors that the Framework¹⁶ states should be ensured for new developments. It follows that the conflict with the respective policies of the LP in respect of these matters should also carry significant weight.
35. Consequently, 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.
36. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. 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

¹⁵ Paragraph 126 NPPF

¹⁶ Paragraphs 110 b) & 130 a)