



Appeal Decision

Site visit made on 24 August 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Appeal Ref: APP/Y3940/W/21/3269473

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 planning permission.
 - The appeal is made by Mr and Mrs Lovatt-Williams against the decision of Wiltshire Council.
 - The application Ref 20/06105/FUL, dated 21 July 2020, was refused by notice dated 8 February 2021.
 - The development proposed is erection of a 3-bedroom bungalow to the rear of No 107 Bouverie Avenue South, associated access and driveway and hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

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

Procedural Matter

3. A revised version of the National Planning Policy Framework (the Framework) was published after the determination of the planning application. The parties were given the opportunity to comment on this matter. I have had regard to the comments received and taken into account the revised Framework in my determination of this appeal.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the living conditions of occupants of 107 and 109 Bouverie Avenue South with particular regard to noise and disturbance, and 9 Francis Way and 59a Bouverie Avenue, with particular regard to outlook and privacy.

Reasons

Character and appearance

5. The appeal site forms part of the rear garden to 107 Bouverie Avenue South (No 107). It is located in a mature residential suburb, with properties of varying designs and sizes set within spacious plots. The arrangement of

surrounding development is predominantly linear in form but with differences in plot sizes and the set back of properties from the street giving rise to some variation in layout. Most properties nevertheless address the street. Bouverie Avenue South is tree-lined and trees are characteristic within the gardens of surrounding properties. These contribute to the verdant and sylvan character of the area.

6. The revised Framework puts greater emphasis on the need for good design than the 2019 Framework. Paragraph 130 of the Framework sets out that developments should function well and add to the overall quality of the area, be sympathetic to local character and establish a sense of place. It states at paragraph 134 that development that is not well designed should be refused.
7. The proposed dwelling would be set back a considerable distance from the street behind No 107 and accessed via a long and steep drive. It would have no relationship with the street. It would also be at odds with the linear pattern of development along Bouverie Avenue South. As such, it would not be sympathetic to local character, it would not establish a sense of place and it would not add to the overall quality of the area. However, I am therefore unable to conclude that the proposed development is well designed.
8. The building itself would have a simple form and its final appearance could be controlled through an appropriately worded condition to ensure the use of appropriate materials. I find no specific harm in terms of character and appearance arises from this.
9. Number 59A Bouverie Avenue (No 59A) is directly adjacent to the appeal site. It is set back behind a long driveway between properties fronting Bouverie Avenue in a similar manner to the appeal scheme proposal. However, No 59A appears as an anomaly in the context of surrounding development and is not, in my view, characteristic of the wider area. Furthermore, No 59A was constructed several years ago and would have pre-dated more recent guidance, including the Framework, on achieving well-designed places. It does not therefore justify the proposal before me.
10. A previous scheme made in outline for a dwelling on the site was dismissed on appeal¹. The Inspector in that case concluded that the proposal would not harm the character or appearance of the area. The scheme before me is for a similar development although with a reduced footprint and alteration to the orientation of the proposed dwelling. I concur with the Inspector in regards to the removal of trees which could happen irrespective of the proposal. I also agree that with additional landscaping and tree planting the verdant and sylvan character of the area would not be unduly harmed by the proposal. In addition, I find that No 107 and the proposed dwelling would be served by generously sized gardens which would not be dissimilar in size to surrounding development.
11. The previous appeal predated the revised Framework. I acknowledge that the previous Inspector found the scheme did not conflict with the Creating Places Design Guide Supplementary Planning Guidance 2006 (SPG). However, in view of the greater emphasis on achieving good design now set out within national policy, I find I reach a different conclusion to the previous Inspector with regards to the overall design and acceptability of the proposal for the reasons I have set out.

¹ APP/Y3940/W/19/3238622

12. I conclude that the proposed development would harm the character and appearance of the area. It would therefore conflict with Core Policy 57 of the Wiltshire Core Strategy 2015 (WCS) and Objective 16 of the SPG which together require new development to be 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, it would also conflict with the design objectives of the Framework.

Living conditions

13. The proposed dwelling would be served via a new driveway which would extend along the boundary with No 107 and Number 109 Bouverie Avenue South (No 109) from which it would be separated by sections of 2 metre high acoustic fence and both new and retained boundary planting. The proposed driveway would slope down steeply from the highway to the parking and manoeuvring area at the front of the proposed house which is indicated to be some 4-5 metres lower than the street level.
14. No 109 has a substantial kitchen/dining room extension to the rear with a fully glazed rear elevation opening onto a raised patio area. Due to the sloping nature of the site, the extension occupies an elevated position in relation to both the garden to Nos 107 and 109 and the proposed driveway. Within the flank wall of No 109, there are a number of windows serving upper floor bedrooms as well as small windows serving the kitchen and study. I observed that these rooms are also served by larger windows in either the front or rear elevation of the house. A door provides access from the ground floor study onto the side passage between No 109 and the boundary fence with No 107.
15. The appellants have submitted an Environmental Noise Impact Assessment (ENIA). This assessed the effect of the additional vehicle movements arising from the proposed development on both Nos 107 and 109. It was based on four vehicles entering and leaving the property during the daytime and two vehicles during the night-time. It also measured the effect of car door slams. Noise receivers were based on points at the rear and side of both properties.
16. The ENIA draws on the World Health Organisation's (WHO) Guidelines for Community Noise. This describes guideline levels for the onset of adverse health effects from noise exposure. It sets out that inside bedrooms sleep disturbance occurs at LAeq, 30dB and LAmx 45dB.
17. The ENIA assessed the level of noise would be below these WHO limits even on the basis of a 10-15dB reduction for a partially open window. It would also fall below the noise limits defined in British Standards². The report concluded that noise generated by the development from vehicular movements would have a negligible impact for night-time noise.
18. The calculation of noise from vehicle movements is averaged over a period of time. This is the standard way for assessing noise and no justification for an alternative approach has been provided. The noise of an individual vehicle would be louder than the average noise levels but not to the extent that it would be considered unacceptable.
19. The level of noise would be significantly lower than that set by the British Standards and very significantly in the case of internal noise. Whilst the vehicle

² BS8233:2014 Guidance on sound insulation and noise reduction for buildings

movements would be noticeable from neighbouring properties, with the sound mitigation as proposed, the level of noise disturbance would fall within acceptable limits. Had I been minded to allow the appeal, the imposition of suitably worded conditions could ensure the sound mitigation, including the use of consolidated material on the driveway and the installation of acoustic fencing, would be secured and retained. I note the Council's environmental health officer (EHO) reached the same conclusion.

20. In the previously dismissed appeal, the Inspector found that the proposed mitigation against noise and disturbance arising from the use of this driveway in connection with a four-bedroom house had not been demonstrated. The scheme before me is for a smaller, three-bedroom house which would be likely to generate fewer vehicle movements to that previous scheme. Furthermore, the ENIA has concluded that the impact of the use of the driveway on neighbouring properties would negligible.
21. My attention has been drawn to the noise guidance set out in the Planning Practice Guidance³ and the advice that the proposal should be assessed against the Noise Exposure Hierarchy (NEH). The neighbouring occupants of No 109 have asserted that the noise arising from the proposal due to vehicle movements and bins being brought to the main road would constitute a Significant Observed Adverse Effect Level (SOAEL) as set out in the NEH, ie a level above which significant adverse effects on health and quality of life occur and where impacts should be avoided rather than mitigated.
22. The experience of noise is subjective and depends upon the sensitivity of those experiencing the noise. However, it seems to me that bins would only be moved around twice weekly to bring them to and from the collection point and that this would be unlikely to be during the night-time when people are sleeping. Furthermore, around two vehicle movements in the night-time leading to the noise levels set out in the ENIA would not be so intrusive as to give rise to sleep disturbance and a material change in behaviour. I therefore find that the scheme would not give rise to a SOAEL, particularly with the mitigation in place.
23. The methodology for the ENIA has been questioned by a third party as it did not include the ground floor extension to No 109 and was based on the presence of vegetation that would not be retained.
24. The omission of the rear extension to No 109 from the ENIA suggests measurements for this part of the building have not been taken. However, I observed that this is used as a kitchen / living area rather than a bedroom. Consequently, even if noise levels experienced in this part of the house were to be higher than shown within the ENIA, this would not be to a part of the house where occupants would be sleeping.
25. The Council's EHO has confirmed that vegetation generally provides negligible sound attenuation and that even if these trees were removed, they would not have had an impact on the overall findings of the report. I have no reason to disagree with this.
26. Vehicles using the driveway in the evening and night will have their headlights on. These could potentially shine into both properties either side of the

³ Paragraph: 005 Reference ID: 30-005-20190722

driveway. Vehicles entering the property would be similar to the current situation with vehicles entering the front driveway of No 107. However, any vehicle exiting the proposed dwelling could potentially cause a nuisance through light disturbance to the rear of neighbouring properties due to the steeply sloping nature of the driveway. However, the proposed 2 metre high fencing either side of the driveway in combination with planned vegetation would prevent dipped head lighting from penetrating the windows of neighbouring properties.

27. The removal of tree T5 would open up views between Nos 107 and 109. However, the tree could be removed irrespective of this proposal. Furthermore, these are not principal windows and the degree of mutual overlooking between side facing elevations that may arise would not be dissimilar to that which commonly occurs between adjacent properties in a similar layout.
28. The proposed dwelling would be positioned a short distance from the shared boundary with 9 Francis Way (No 9) which lies to the rear and downslope of the appeal site. Due to differences in ground level, the ground floor windows would be set at a similar level to the first floor windows in No 9. They would be some 20 metres from this property's rear elevation and behind a proposed 2 metre high fence and vegetation on this boundary. Whilst some of the trees on the boundary are deciduous, the high fence in combination with the existing vegetation and proposed additional planting would screen No 9 from any overlooking from either the windows or the garden to the proposed dwelling. It would therefore not give rise to an unacceptable loss of privacy.
29. The roof of the proposed house would be visible from No 9. However, with the roof sloping away from this boundary and featuring a modest front facing gable, it would not appear as a bulky or overbearing structure. From the side garden to No 9, which wraps around the appeal site, the end gable would be visible above the boundary fence although set some distance back from it. Whilst it would alter the view from this property and its gardens, it would not result in an undue loss of outlook for these neighbours. A suitably worded condition could secure boundary fencing to safeguard the living conditions of occupants of this property in perpetuity if the appeal were to be allowed.
30. I note the Inspector in the previous appeal found that there would be harm arising from the position and bulk of the proposed bulk in relation to No 9, however, the proposal has been reoriented and its bulk reduced on this elevation. I am satisfied these previous concerns have been addressed.
31. The proposed house and 59A Bouverie Avenue (No 59A) would occupy the same ground level, with No 59A being set some distance from the shared boundary and separated from it by a high boundary hedge and trees. This would provide screening between these properties and no unacceptable loss of privacy or outlook for this neighbour would arise. No 59A would also be both offset from and some distance away from the proposed driveway and parking area which would be screened by the boundary vegetation. This would minimise any light intrusion from car headlights.
32. I conclude that the proposed development would not harm the living conditions of occupants of Nos 107 and 109 with regard to noise and disturbance and No 9 and No 59a Bouverie Avenue, with regard to outlook and privacy. It would therefore accord with Core Policy 57 of the WCS which seeks to ensure that new development does not harm the amenities of existing occupants. It would

also comply with the Framework which supports development that promotes a high standard of amenity, health and well-being for existing users.

Other Matter

33. The appeal site is located within the River Avon SAC catchment area. The Avon Valley Special Protection Area (SPA) and Ramsar sites lie in downstream sections of the river and are affected by activities within the SAC. The SAC, SPA and Ramsar sites are habitats sites and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63 of which prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the protected sites. I am the competent authority for the purposes of this appeal.
34. If I were minded to allow the appeal, as the competent authority I would need to undertake an appropriate assessment to confirm that the proposal would not adversely affect the integrity of the sites. However, as I am dismissing the appeal for other reasons, I do not need to consider this matter further.

Planning Balance

35. It has not been disputed that the Council cannot demonstrate a five year supply of deliverable housing sites. I have not been provided with details of any shortfall. In such circumstances, housing development should be subject to the presumption in favour of sustainable development, as set out in paragraph 11 d) of the Framework.
36. The adverse impacts arising from the proposal relate to its harmful effect on character and appearance. This weighs against the scheme.
37. I have found that the scheme would not harm the living conditions of adjoining neighbours. This is a neutral factor.
38. The proposed development would contribute a single dwelling, on a windfall site, to housing supply. There would be some social and economic benefits associated with future occupants becoming part of the local community, supporting local services and facilities and contributing to local revenue through Council tax and CIL contributions. Further economic benefits would occur during the construction phase of the development. The proposed development would be in a reasonably accessible location, some 20 minutes walk from the city centre and near to a range of services. Future occupants would not be reliant on the use of the private car to access these.
39. In delivering a single dwelling, these benefits are however very limited and do not significantly and demonstrably outweigh the environmental harm that would arise from the scheme when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development should not be applied.

Conclusion

40. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Therefore, for the reasons given, the appeal should be dismissed.

Rachael Pipkin INSPECTOR