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# Appeal Decision

Site visit made on 18 March 2022

**by Lewis Condé BSc (Hons), MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 06 April 2022**

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**Appeal Ref: APP/C3105/W/21/3285267**

**43 Oxford Road, Kidlington OX5 2BP**

- 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 Fami Shakerchi against the decision of Cherwell District Council.
  - The application Ref 21/00923/F, dated 15 March 2021, was refused by notice dated 7 May 2021.
  - The development proposed is described as 'Re-submission of and amendments to 17/00917/F for demolition of bungalow and replace with 5No apartments'.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appellant has submitted revised plans as part of this appeal that had not been accepted by the Local Planning Authority (LPA) when it made its decision.
3. The revised plans would materially alter the proposed development, whilst the application was subject to objections from third parties. Therefore, having regard to the Wheatcroft principles<sup>1</sup>, I consider that if I were to take account of the amended plans there is a risk of disadvantaging interested parties. I have therefore determined the appeal based on the plans that were considered by the LPA when it determined the application.

## Main Issues

4. The main issues are the effect of the development upon:
  - The character and appearance of the area; and
  - The living conditions of occupiers of the neighbouring properties of nos. 41 and 45 Oxford Road, with particular regard to outlook and light.

## Reasons

### *Character and Appearance*

5. The surrounding area has a suburban character, with most neighbouring properties being residential in nature, although there are some nearby community and commercial uses. The dwellings along this part of Oxford Road are generally not consistent in style or type. It is evident that many properties

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

on the street have either been substantially altered, extended, or entirely redeveloped, including both the immediate adjacent properties at nos. 41 and 45 Oxford Road. As such, the streetscene contains a mix of buildings that vary significantly in their scale and appearance.

6. Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1 (adopted 2015) requires proposals for new developments, amongst other things, to achieve high design standards that contribute positively to an area's character and identity. Additionally, Saved Policies C28 and C30 of the Cherwell Local Plan 1996 seek to ensure that the design and external appearance of developments are sympathetic and compatible with the character of the area. Despite these latter policies being of some age, they remain generally consistent with the National Planning Policy Framework (the Framework) in respect of design expectations.
7. The appellant highlights that the proposals are very similar to the previous planning permission at the site (ref: 17/00917/F). It is unclear whether that permission remains extant, but the LPA suggests it has expired and I have not been provided with evidence to suggest otherwise. In any case, the current proposal is for an alternative scheme, that must be considered on its merits.
8. The appeal scheme differs from the previous planning permission at the site in that what had been a single storey section at the rear would become 2 storeys, with an additional flat-roofed section beyond.
9. The proposed development retains a simple hipped roof at its front, with low eaves and a small dormer window on the front elevation, albeit the roof is marginally higher than the previously approved scheme. However, to facilitate the additional unit, the roof form towards the rear of the building would have significantly higher eaves. This results in a section of the rear of the building having a larger massing than the front of the property, as well as a mix of roof forms. Furthermore, it would also entail a large bulk of the rear roof structure projecting beyond the roof plane at the front of the building. This mix of roof forms lacks architectural subtlety and instead would make the development appear rather cumbersome and contrived in nature. It would represent a poorer quality of design than that previously permitted.
10. Views of the mixed roof forms would be available from public vantage points on Oxford Road, where it would be an awkward and unattractive presence within the streetscene. The overall harm is to some extent mitigated by the development being set back from the road, and due to the varied design of surrounding properties. However, irrespective of the sensitivity of its context, the development would still be visible from the public domain and would be an unsympathetic addition to the character of the area.
11. I therefore deem that the proposed development would cause unacceptable harm to the character and appearance of the area. Consequently, it would be contrary to Policy ESD15 of the Cherwell Local Plan 2011-2031 Part 1 and Saved Policies C28 and C30 of the Cherwell Local Plan 1996. Together these policies, amongst other matters, emphasise the importance of design and external appearance, as well as enhancement of the built environment. The development would also be contrary to the aims of Chapter 12 of the Framework that seeks to promote development of high design quality.

### *Living Conditions*

12. Both the neighbouring properties of no. 41 and 45 have been redeveloped to provide 2 storey buildings (with upper floors in their roof space) containing several flats. The development of the neighbouring properties both appear to have been complete following the approval of planning permission 17/00917/F at the application site. These neighbouring properties both extend significantly in depth past the existing bungalow occupying the appeal site.
13. With respect to no. 41, the side elevation windows that serve habitable rooms in that property are set off the boundary with the appeal site. The outlook from these windows is on to a closed boarded fence sited on the boundary that measures approximately 1.8m in height.
14. The part of the proposed building that the neighbouring windows would face onto would be very similar in nature to the previously permitted scheme. The overall depth of the proposed development has increased, while it would also have a larger massing where the eaves height has been increased. However, these elements of the building are set further away from the boundary with no. 41 and do not directly align with the neighbouring windows.
15. Taking account of the overall separation distances, the current outlook conditions, and the previously permitted development, I find that the appeal proposal would not have a significant enclosing effect on the side elevation windows serving no. 41. The proposed development would therefore not cause harm to the living conditions of the occupiers in respect of outlook and light.
16. No. 45 is located to the north of the appeal site. The habitable room windows serving no. 45, that would be affected by the proposal, are relatively small in scale and are located approximately 0.6m from the boundary with the appeal site. The boundary between the appeal property and no. 45 again contains a close boarded fence for much of its length (measuring approximately 1.8m in height). In addition, there are existing outbuilding/structures on the appeal site that are built tight to the boundary with no. 45 and exceed the fence height. Together all these attributes result in the outlook from the windows in the side elevation of no. 45 being severely restricted. Similarly, the level of light they receive is likely to also be limited.
17. The proposed building would be located slightly off the boundary with no. 45, and would involve the removal of the existing outbuilding/structures near the boundary line. It would introduce a taller and deeper building on to the appeal site than both the current dwelling and the previously approved scheme. However, the relationship of the proposed building with window serving no. 45 would remain very similar. Furthermore, due to the existing site context, the proposal would not materially worsen the sense of enclosure, outlook, or natural light to the occupiers of no. 45.
18. Consequently, I find that the development would not result in significant harmful effects to the living conditions of the occupiers of the neighbouring properties in respect of outlook and light. Accordingly, I conclude that there would be no conflict with Policy ESD15 of the Cherwell Local Plan 2011- 2031 Part 1 or Saved Policy C30 of the Cherwell Local Plan 1996, insofar as these seek to ensure that new development has regard to the amenity of adjoining occupiers.

### **Other Matters**

19. I note the frustration of the appellant regarding the LPA's handling of the planning application. Especially, that matters relating to the design of the appeal proposal could have potentially been addressed had the LPA been willing to consider revised plans. However, I have considered the appeal scheme on its own merits.

### **Conclusion**

20. For the reasons outlined above and having regard to the development plan, and all other material considerations, the appeal is dismissed.

*Lewis Condé*

INSPECTOR